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THE CUSTOMS OF OLD ENGLAND

BY

F. J. SNELL

82203

WITH SEVENTEEN ILLUSTRATIONS

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PREFACE

THE aim of the present volume is to deal with Old English Customs, not so much in their picturesque aspect—though that element is not wholly wanting—as in their fundamental relations to the organised life of the Middle Ages. Partly for that reason and partly because the work is comparatively small, it embraces only such usages as are of national (and, in some cases, international) significance. The writer is much too modest to put it forth as a scientific exposition of the basic principles of mediæval civilization. He is well aware that a book designed on this unassuming scale must be more or less eclectic. He is conscious of manifold gaps—*valde deflenda.* And yet, despite omissions, it is hoped that the reader may rise from its perusal with somewhat clearer conceptions of the world as it appeared to the average educated Englishman of the Middle Ages. This suggests the remark that the reader specially in view is the average educated Englishman of the twentieth century, who has not perhaps forgotten his Latin, for Latin has a way of sticking, while Greek, unless cherished, drops away from a man.

The materials of which the work is composed have been culled from a great variety of sources, and the writer almost despairs of making adequate acknowledgments. For years past admirable articles cognate to the study of mediæval relationships have been published from time to time in learned periodicals like *Archæologia*, the *Archæological Journal*, the *Antiquary*, etc., where, being sandwiched between others of another character, they have been lost to all but antiquarian experts of omnivorous appetite. Assuredly, the average educated Englishman will not go in quest of them, but it may be thought he will esteem the opportunity, here offered, of gaining enlightenment, if not in the full and perfect sense which might have been possible, had life been less brief and art not quite so long. The same observation applies to books, with this difference that, whereas in articles information is usually compacted, in some books at least it has to be picked out from amidst a mass of irrelevant particulars without any help from indices. If the writer has at all succeeded in performing his office —which is to do for the reader what, under other circumstances, he might have done for himself— many weary hours will not have been spent in vain, and the weariest are probably those devoted to the construction of an index, with which this book, whatever its merits or defects, does not go unprovided.

Mere general statements, however, will not suffice; there is the personal side to be thought of. The great "Chronicles and Memorials" series has been

served by many competent editors, but by none more competent than Messrs. Riley, Horwood, and Anstey, to whose introductions and texts the writer is deeply indebted. Reeves' *History of English Law* is not yet out of date; and Mr. E. F. Henderson's *Select Documents of the Middle Ages* and the late Mr. Serjeant Pulling's *Order of the Coif*, though widely differing in scope, are both extremely useful publications. Mr. Pollard's introduction to the Clarendon Press selection of miracle plays contains the pith of that interesting subject, and Miss Toulmin Smith's *York Plays* and Miss Katherine Bates's *English Religious Drama* will be found valuable guides. Perhaps the most realistic description of a Miracle Play is that presented in a few pages of Morley's *English Writers*, where the scene lives before one. For supplementary details in this and other contexts, the writer owes something to the industry of the late Dr. Brushfield, who brought to bear on local documents the illumination of sound and wide learning. A like tribute must be paid to the Rev. Dr. Cox, but having regard to his long and growing list of important works, the statement is a trifle ludicrous.

One of the best essays on mortuary rolls is that of the late Canon Raine in an early Surtees Society volume, but the writer is specially indebted to a contribution of the Rev. J. Hirst to the *Archæological Journal*. The late Mr. André's article on vowesses, and Mr. Evelyn-White's exhaustive account of the Boy-Bishop must be mentioned, and—lest I forget—

Dr. Cunningham's *History of English Commerce.* The late Mr. F. T. Elworthy's paper on Hugh Rhodes directed attention to the Children of the Chapel, and Dom. H. F. Feasey led the way to the Lady Fast. Here and often the writer has supplemented his authorities out of his own knowledge and research. It may be added that, in numerous instances, indebtedness to able students (*e.g.* Sir. George L. Gomme) has been expressed in the text, and need not be repeated. Finally it would be ungrateful, as well as ungallant, not to acknowledge some debt to the writings of the Hon. Mrs. Brownlow, Miss Ethel Lega-Weekes, and Miss Giberne Sieveking. Ladies are now invading every domain of intellect, but the details as to University costume happened to be furnished by the severe, and really intricate studies of Professor E. G. Clark.

F. J. S.

TIVERTON, N. DEVON,
January 22, 1911

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THE CUSTOMS OF OLD ENGLAND

ECCLESIASTICAL

CHAPTER I

LEAGUES OF PRAYER

A WORK purporting to deal with old English customs on the broad representative lines of the present volume naturally sets out with a choice of those pertaining to the most ancient and venerable institution of the land—the Church; and, almost as naturally, it culls its first flower from a life with which our ancestors were in intimate touch, and which was known to them, in a special and excellent sense, as religious.

The custom to which has been assigned the post of honour is of remarkable and various interest. It takes us back to a remote past, when the English, actuated by new-born fervour, sent the torch of faith to their German kinsmen, still plunged in the gloom of traditional paganism; and it was fated to end when the example of those same German kinsmen stimulated our countrymen to throw off a yoke which had long been irksome, and was then in sharp conflict with their patriotic ideals. It is foreign to

the aim of these antiquarian studies to sound any note of controversy, but it will be rather surprising if the beauty and pathos of the custom, which is to engage our attention, does not appeal to many who would not have desired its revival in our age and country.[1] Typical of the thoughts and habits of our ancestors, it is no less typical of their place and share of the general system of Western Christendom, and in the heritage of human sentiment, since reverence for the dead is common to all but the most degraded races of mankind. That mutual commemoration of departed, and also of living worth, was not exclusive to this country, is brought home to us by the fact that the most learned and comprehensive work on the subject, in its Christian and mediæval aspects is Ebner's *Die Klosterlichen Gebets-Verbrüderungen* (Regensburg and New York, 1890). This circumstance, however, by no means diminishes—it rather heightens—the interest of a custom for centuries embedded in the consciousness and culture of the English people.

First, it may be well to devote a paragraph to the phrases applied to the institution. The title of the chapter is "Leagues of Prayer," but it would have been simple to substitute for it any one of half-a-dozen others—less definite, it is true—sanctioned by the precedents of ecclesiastical writers. One term is "friendship"; and St. Boniface, in his letters referring to the topic, employs indifferently the cognate expressions "familiarity," "charity" (or "love"). Sometimes he speaks of the "bond of brotherhood" and "fellowship." Venerable Bede favours the word "*communion.*" *Alcuin, in his epistles,*

[1] *I.e.*, by the Guild of All Souls, the Confraternity of the Blessed Sacrament, etc.

alternates between the more precise description "pacts of charity" and the vaguer expressions "brotherhood" and "familiarity." The last he employs very commonly. The fame of Cluny as a spiritual centre led to the term "brotherhood" being preferred, and from the eleventh century onwards it became general.

The privilege of fraternal alliance with other religious communities was greatly valued, and admission was craved in language at once humble, eloquent, and touchingly sincere. Venerable Bede implores the monks of Lindisfarne to receive him as their "little household slave"—he desires that "my name also" may be inscribed in the register of the holy flock. Many a time does Alcuin avow his longing to "merit" being one of some congregation in communion of love; and, in writing to the Abbeys of Girwy and Wearmouth, he fails not to remind them of the "brotherhood" they have granted him.

The term "brother," in some contexts, bore the distinctive meaning of one to whom had been vouchsafed the prayers and spiritual boons of a convent other than that of which he was a member, if, as was not always or necessarily the case, he was incorporated in a religious order. The definition furnished by Ducange, who quotes from the diptych of the Abbey of Bath, proves how wide a field the term covers, even when restricted to confederated prayer:

"Fratres interdum inde vocantur qui in ejusmodi Fraternitatem sive participationem orationum aliorumque bonorum spiritualium sive monachorum sive aliarum Ecclesiarum et jam Cathedralium admissi erant, sive laici sive ecclesiastici."

Thus the secular clergy and the laity were recognized as fully eligible for all the benefits of this high

privilege, but it is identified for the most part with the functions of the regular clergy, whose leisured and tranquil existence was more consonant with the punctual observance of the custom, and by whom it was handed down to successive generations as a laudable and edifying practice importing much comfort for the living, and, it might be hoped, true succour for the pious dead.

In so far as the custom was founded on any particular text of Scripture, it may be considered to rest on the exhortation of St. James, which is cited by St. Boniface: "Pray for one another that ye may be saved, for the effectual fervent prayer of a righteous man availeth much." St. Boniface is remembered as the Apostle of Germany, and when, early in the eighth century, he embarked on his perilous mission, he and his company made a compact with the King of the East Angles, whereby the monarch engaged that prayers should be offered on their behalf in all the monasteries in his dominion. On the death of members of the brotherhood, the tidings were to be conveyed to their fellows in England, as opportunity occurred. Not only did Boniface enter into leagues of prayer with Archbishops of Canterbury and the chapters and monks of Winchester, Worcester, York, etc., but he formed similar ties with the Church of Rome and the Abbey of Monte Cassino, binding himself to transmit the names of his defunct brethren for their remembrance and suffrage, and promising prayers and masses for *their* brethren on receiving notice of their decease. Lullus, who followed St. Boniface as Archbishop of Mayence, and other Anglo-Saxon missionaries extended the scope of the confederacy, linking themselves with English and Continental monasteries—for instance, Salzburg.

Wunibald, a nephew of St. Boniface, imitating his uncle's example, allied himself with Monte Cassino. We may add that in Alcuin's time York was in league with Ferrières; and in 849 the relations between the Abbey and Cathedral of the former city and their friends on the Continent were solemnly confirmed.

Having given some account of the infancy or adolescence of the custom, we may now turn to what may be termed, without disrespect, the machinery of the institution. The death of a dignitary, or of a clerk distinguished for virtue and learning, or of a simple monk, has occurred. Forthwith his name is engrossed on a strip of parchment, which is wrapped round a stick or a wooden roll, at each end of the latter being a wooden or metal cap designed to prevent the parchment from slipping off. After the tenth century, at certain periods—say once a year—the names of dead brethren were carried to the scriptorium, where they were entered with the utmost precision, and with reverent art, on a mortuary roll.

The next step was to summon a messenger, and fasten the roll to his neck, after which the brethren, in a group at the gateway, bade him God-speed. These officials were numerous enough to form a distinct class, and some hundreds of them might have been found wending their way simultaneously on the same devout errand through the Christian Kingdoms of the West, in which they were variously known as *geruli*, *cursores*, *diplomates*, and *bajuli*. We may picture them speeding from one church or one abbey to another, bearing their mournful missive, and when England had been traversed, crossing the narrow seas to resume their melancholy task on the Continent. At whatever place he halted, the messenger might

count on a sympathetic reception; and in every monastery the roll, having been detached from his neck, was read to the assembled brethren, who proceeded to render the solemn chant and requiem for the dead in compliance with their engagements. On the following day the messenger took his leave, lavishly supplied with provisions for the next stage.

Monasteries often embraced the opportunity afforded by these visits to insert the name of some brother lately deceased, in order to avoid waiting for the despatch of their own annual encyclical, and so to notify, sooner than would otherwise have been possible, the death of members, for whom they desired the prayers of the association.

Mortuary rolls, many examples of which have been found in national collections—some of them as much as fifty or sixty feet in length—contain strict injunctions specifying that the house and day of arrival be inscribed on the roll in each monastery, together with the name of the superior, the purpose being to preclude any failure on the part of the messenger worn out with the fatigue, or daunted by the hardships and perils, of the journey. The circuit having been completed, the parchment returned to the monastery from which it had issued, whereupon a scrutiny was made to ascertain, by means of the dates, whether the errand had been duly performed. "After many months' absence," says Dr. Rock, "the messenger would reach his own cloister, carrying back with him the illuminated death-bill, now filled to its fullest length with dates and elegies for his abbot to see that the behest of the chapter had been duly done, and the library of the house enriched with another document."

One of the Durham rolls is thirteen yards in

length and nine inches in breadth. Consisting of nineteen sheets of parchment, it was executed on the death of John Burnby, a Prior of Durham, in 1464. His successor, Richard Bell, who was afterwards Bishop of Durham, and the convent, caused this roll, commemorating the virtues of the late Prior and William of Ebchester, another predecessor, to be circulated through the religious houses of the entire kingdom; and inscribed on it are the titles, orders and dedications of no fewer than six hundred and twenty-three. Each had undertaken to pray for the souls of the two priors in return for the prayers of the monks at Durham. The roll opens with a superb illumination, three feet long, depicting the death and burial of one of the priors; and at the foot occurs the formula: *Anima Magistri Willielmi Ebchestre et anima Johannis Burnby et animæ omnium defunctorum per Dei misericordiam in pace requiescant.*

The monastery first visited makes the following entry: *Titulus Monasterii Beatæ Mariæ de Gyseburn in Clyveland, ordinis S. Augustini Ebor. Dioc. Anima Magistri Willielmi Ebchestre et anima Johannis Burnby et animæ omnium defunctorum per misericordiam Dei in pace requiescant. Vestris nostra damus, pro nostris vestra rogamus.* The other houses employ identical terms, with the exception of the monastery of St. Paul, Newenham, Lincolnshire, which substitutes for the concluding verse a hexameter of similar import. It is of some interest to remark that, apart from armorial or fanciful initials, the standing of a house may be gauged by the handwriting, the titles of the larger monasteries being given in bold letters, while those of the smaller form an almost illegible scrawl. The greater houses would have been in a position to

support a competent scribe—not so the lesser; and this is believed to have been the reason of the difference.

Almost, if not quite, as important as the roll just noticed is that of Archbishop Islip of Westminster recently reproduced in *Vetusta Monumenta.*

After the tenth century it appears to have been the custom in some monasteries, on the death of a member, to record the fact; and at certain periods—probably once a year—the names of all the dead brethren were inscribed on an elaborate mortuary roll in the scriptorium, before being dispatched to the religious houses throughout the land.

The books of the confraternities are divisible into two classes—necrologies and *libri vitae.* The former are in the shape of a calendar, in which the names are arranged according to the days on which the deaths took place; the latter include the names of the living as well as the dead, and were laid on the altar to aid the memory of the priest during mass. Twice a day—at the chapter after prime and at mass—the monks assembled to listen to the recitation of the names, singly or collectively, from the sacramentary, diptych, or book of life. The most famous English *liber vitae*—that of Durham—embraces entries dating from the time of Edwin, King of Northumbria (616–633), and was compiled, apparently, between the devastation of Lindisfarne in 793 and the withdrawal of the monks from the island in 875. In the first handwriting there are 3,100 names, a goodly proportion of them belonging to the seventh century. As has been already implied, various degrees are represented in the rolls of the living and the dead—notably, of course, benefactors, but recorded in them are bishops and

abbots, princes and nobles, monks and laymen, and often enough this is their only footprint on the sands of time. The name of a pilgrim in the confraternity book of any abbey signifies that he was there on the day mentioned.

ECCLESIASTICAL

CHAPTER II

VOWESSES

NOT wholly aloof from the subject treated in the previous chapter is the custom that prevailed in the Middle Ages for widows to assume vows of chastity. The present topic might possibly have been reserved for the pages devoted to domestic customs, but the recognition accorded by the Church to a state which was neither conventual nor lay, but partook of both conditions in equal measure, decides its position in the economy of the work. We must deal with it here.

Before discussing the custom in its historical and social relations, it will be well to advert to the soil of thought out of which it sprang, and from which it drew strength and sustenance. Already we have spoken of the heritage of human sentiment. Now there is ample evidence that the indifference to the marriage of widows which marks our time did not obtain always and everywhere. On the contrary, among widely separated races such arrangements evoked deep repugnance, as subversive of the perfect union of man and wife, and clearly also of the civil inferiority of females. The notion that a woman is the property of her husband, joined to a belief in the immortality of the soul, appears to lie at the

root of the dislike to second marriages—which, according to this view, imply a degree of freedom approximating to immorality. The culmination of duty and fidelity in life and death is seen in the immolation of Hindu widows. The Manu prescribes no such fiery ordeal, but it states the principles leading to this display of futile heroism: "Let her consecrate her body by living entirely on flowers, roots, and fruits. Let her not, when her lord is deceased, ever pronounce the name of another man. A widow who slights her deceased lord by marrying again brings disgrace on herself here below, and shall be excluded from the seat of her lord."

A similar feeling permeated the early Church. "The argument used against the unions," says Professor Donaldson, "was that God made husband and wife one flesh, and one flesh they remained even after the death of one of them. If they were one flesh, how could a second woman be added to them?" He alludes, of course, to the re-marriage of the husband, but the argument, whatever it may be worth, applies equally to both parties. An ancient example of renunciation is afforded by Judith, of whom it is recorded: "She was a widow now three years and six months, and she made herself a private chamber in the upper part of the house, in which she abode shut up with her maids, and she wore hair-cloth upon her loins, and fasted all the days of her life, except the Sabbaths and new moons, and the feasts of the house of Israel; and on festival days she came forth in great glory, and she abode in her husband's house a hundred and five years."

An order of widows is said to have been founded or confirmed by St. Paul, who fixed the age of

admission at sixty. This assertion, one suspects, grew out of a passage in the First Epistle to Timothy, in which the apostle employs language that would, at least, be consonant with such a proceeding: "Honour widows that are widows indeed. . . . Now she that is a widow indeed and desolate trusteth in God and continueth in supplications and prayers night and day." Simple but very striking is the epitaph inscribed on the wall of the Vatican:

OCTAVIÆ MATRONÆ VIDVÆ DEI.

The order of deaconesses appears to have been mainly composed of pious widows, and only those were eligible who had had but one husband. This order came to an end in the eleventh or twelfth century, but the vowesses, as a class, continued to subsist in England until the convulsions of the sixteenth century, and in the Roman Church survive as a class with some modifications in the order of Obiates, who, says Alban Butler in his life of St. Francis, "make no solemn vows, only a promise of obedience to the mother-president, enjoy pensions, inherit estates, and go abroad with leave. Their abbey in Rome is filled with ladies of the first rank."

The chief distinction between deaconesses and widows was the obligation imposed on the former to accomplish certain outward works, whereas widows vowed to remain till death in a single life, in which, like nuns, they were regarded as mystically espoused to Christ. Unlike nuns, however, vowesses usually supported the burdens entailed by their previous marriage—superintending the affairs of the household and interesting themselves in the welfare of

their descendants. St. Elizabeth of Hungary, though she bound herself to follow the injunctions of her confessor and received from him a coarse habit of undyed wool, did not become a nun, but, on his advice, retained her secular estate and ministered to the needs of the poor. But instances occur in which vowesses retired from the world and its cares. Elfleda, niece of King Athelstan, having resolved to pass the remainder of her days in widowhood, fixed her abode in Glastonbury Abbey; and as late as July 23, 1527, leave was granted to the Prioress of Dartford to receive "any well-born matron, widow of good repute, to dwell perpetually in the monastery without a habit according to the custom of the monastery." Now and then a widow would completely embrace the religious life, as is shown by an inscription on the brass of John Goodrington, of Appleton, Berkshire, dated 1519, which states that his widow "toke relygyon at y^e^ monastery of Sion."

The position of vowesses in the eyes of the Church may be illustrated in various ways. For example, the homilies of the Anglo-Saxon Ælfric testify to a triple division of the people of God. "There are," says he, "three states which bear witness of Christ; that is, maidenhood, and widowhood, and lawful matrimony." And with the quaintness of mediæval symbolists, he affirms that the house of Cana in Galilee had three floors—the lowest occupied by believing married laymen, the next by reputable widows, and the uppermost by virgins. Emphasis is given to the order of comparative merit thus defined by the application to it of one of our Lord's parables, for the first are to receive the thirty-fold, the second the sixty-fold, and the third and highest division the hundred-fold reward. Similarly, a hymn in the

Sarum Missal for the festival of Holy Women asserts:

> Fruit thirty-fold she yielded,
> While yet a wedded wife;
> But sixty-fold she rendered,
> When in a widowed life.

And a Good Friday prayer in the same missal is introduced with the words: "Let us also pray for all bishops, priests, deacons, sub-deacons, acolytes, exorcists, readers, door-keepers, confessors, virgins, widows, and all the holy people of God."

In the pontifical of Bishop Lacy of Exeter may be found the office of the Benediction of a Widow. The ceremony was performed during mass, and prefixed to the office is a rubric directing that it shall take place on a solemn day or at least upon a Sunday. Between the epistle and gospel the bishop, seated in his chair, turned towards the people, asked the kneeling widow if she desired to be the spouse of Christ. Thereupon she made her profession in the vulgar tongue, and the bishop, rising, gave her his blessing. Then followed four prayers, in one of which the bishop blessed the habit, after which he kneeled, began the hymn *Veni Creator Spiritus*, and at the close bestowed upon the vowess the mantle, the veil, and the ring. More prayers were said, wherein the bishop besought God to be the widow's solace in trouble, counsel in perplexity, defence under injury, patience in tribulation, abundance in poverty, food in fasting, and medicine in sickness; and the rite ended with a renewed commendation of the widow to the merciful care of God.

It is worthy of note that in these supplications mention is made of the sixty-fold reward which the

widow is to receive for her victory over her old enemy the Devil; and also, that the postulant is believed to have made her vow with her hands joined within those of the bishop, as if swearing allegiance.

Several witnesses were necessary on the occasion. When, for instance, the widow of Simon de Shardlowe made her profession before the Bishop of Norwich, as she did in 1369, the deed in which the vow was registered, and upon which she made the sign of the cross in token of consent, was witnessed by the Archdeacon of Norwich, Sir Simon de Babingle, and William de Swinefleet. In the same way the Earl of Warwick, the Lords Willoughby, Scales and others, were present at the profession of Isabella, Countess of Suffolk. This noble lady made her vow in French, as did also Isabella Golafré, when she appeared for the purpose on Sunday, October 18, 1379, before William of Wykeham, Bishop of Winchester. Notwithstanding the direction in Bishop Lacy's pontifical, the vow was sometimes spoken in Latin, an instance of which is the case of "Domina Alicia Seynt Johan de Baggenet," whose profession took place on April 9, 1398, in the chapel of the Lord of Amberley, Sussex.

That the vow was restricted to the obligation of perpetual chastity, and in no way curtailed the freedom and privileges which the vowess shared with other ladies, is demonstrated by the contents of various wills, like that of Katherine of Riplingham, dated February 8, 1473. Therein she styles herself an "advowess"; but, having forfeited none of her civil rights, she devises estates, executes awards, and composes family differences. This is quite in the spirit of St. Paul's words: "If any widows have

children or nephews, let them learn first to show piety at home, and to requite their parents, for that is good and acceptable to God."

Allusion has been made to the ring as the symbol of the spiritual espousal. As such it was the object of peculiar reverence, and its destination was frequently specified in the vowess's will. Thus in *Testamenta Vetusta* we find the abstract of the will of Alice, widow of Sir Thomas West, dated 1395, in which the lady bequeaths "the ring with which I was yspoused to God" to her son Sir Thomas. In like manner Katherine Riplingham leaves a gold ring set with a diamond—the ring with which she was sacred—to her daughter Alice Saint John. To some vowesses the custody even of a son or daughter appeared unworthy of so precious a relic; and thus we learn that Lady Joan Danvers, by her will dated 1453, gave her spousal ring to the image of the Crucifix near the north door of St. Paul's, while Lady Margaret Davy presented hers to the image of Our Lady of Walsingham.

In certain instances the formality of episcopal benediction was dispensed with, a simple promise sufficing. As a case in point, John Brackenbury, by his will dated 1487, bequeathed to his mother certain real estate subject to the condition that she did not marry again—a condition to which she assented before the parson and parish of Thymmylbe. "If," says the testator, "she keep not that promise, I will that she be content with that which was my father's will, which she had every peny." But, in compacts or wills in which the married parties themselves were interested, the vow seems to have been usually exacted. Wives sometimes engaged with their husbands to make the vow; and the will

of William Herbert, Knight, Earl of Pembroke, dated July 27, 1469, contains an affecting reminder of duty—"And, wife, that you may remember your promise to take the order of widowhood, so that you may be the better maistres of your owen, to perform my will, and to help my children, as I love and trust you, etc."

Husbands left chattels to their wives provided that they took the vow of chastity. The will of Sir Gilbert Denys, Knight, of Syston, dated 1422, sets out: "If Margaret, my wife, will after my decease vow a vow of chastity, I give her all my moveable goods, she paying my debts and providing for my children; and if she will not vow the vow of chastity, I desire my goods may be divided and distributed in three equal parts." On like terms wives were appointed executrices. William Edlington, Esq., of Castle Carlton, in his will dated June 11, 1466, declares: "I make Christian, my wife, my sole executor on this condition, that she take the mantle soon after my decease; and in case she will not take the mantle and the ring, I will that William my son [and other persons named] be my executors, and she to have a third part of all my goods moveable."

Such is the frailty of human nature that even when widows accepted the obligation of faith and chastity in the most solemn manner, the vow was occasionally broken. This will hardly excite surprise when we consider the youth, or comparative youth, of some of the postulants. Mary, the widow of Lewis, King of Hungary, was only twenty-three at the time of her profession. Our English annals yield striking instances of promises followed by repentance. Thus Eleanor, third daughter of King

John, "on the death of her first husband, the Earl of Pembroke, 1231, in the first transports of her grief, made in public a solemn vow in the presence of Edmund, Archbishop of Canterbury, that she would never again become a wife, but remain a true spouse of Christ, and received a ring in confirmation, which she, however, broke, much to the indignation of a strong party of the laity and clergy of England, on her marriage with Simon de Montfort, Earl of Leicester." Another delinquent was Lady Elizabeth Juliers, Countess of Kent. When her first husband died, in 1354, she took a vow of chastity before William de Edyndon, Archbishop of Canterbury. Six years later she was wedded privately and without licence to Sir Eustace Dabridgecourt, Knight. As the result, the Archbishop of Canterbury instituted proceedings against her, and she was condemned to severe penance for the remainder of her life. In the light of these examples it is unnecessary to observe that the infraction of a vow so strict and stringent brought the utmost discredit on any widow who might be guilty of it.

The question has been raised, why widows did not, instead of making their especial vow, enter the third orders of St. Dominic and St. Francis, both of them intended for pious persons remaining in the world. The answer has already, in some degree, been given in what was said regarding the extinct order of deaconesses. Followers of St. Dominic and St. Francis were bound to recite daily a shortened form of the Breviary, supposing that they were able to read, or, if they were not able, a certain number of Aves and Paternosters. They were further expected to observe sundry fasts over and above those commanded by the Church, and thus they

became qualified for all the benefits accruing to the first two orders, Dominican and Franciscan. With the vowesses it was different. The one condition imposed upon them was that of chastity, as tending to a state of sanctification. They took upon themselves no other obligation whatever, and consequently acquired no title to the blessings and privileges flowing from the strict observance of rules to which they did not subscribe. Even after the Reformation the custom did not absolutely cease. At any rate, Anne Clifford, Countess of Dorset, who died in 1676, is stated, after the death of her last husband, to have dressed in black serge and to have been very abstemious in the matter of food.

Here and there may be found funeral monuments containing representations of vowesses. Leland remarks, with reference to a member of the Marmion family at West Tanfield, Yorkshire: "There lyeth there alone a lady with the apparill of a vowess"; and in Norfolk there are still in existence two brasses of widows and vowesses. The earlier and smaller, of about the year 1500, adjoins the threshold of the west door of Witton church, near Blofield, and bears the figure of a lady in a gown, mantle, barbe or gorget, and veil, together with the inscription:

ORATE ANIMA DOMINE JULIANE ANGELL
VOTRICIS CUJUS ANIME PROPICIETUR DEUS

The other example is in the little church of Frenze, near Diss, which contains, among a number of other interesting brasses, that of a lady clothed, like the former, in gown, mantle, barbe, and veil. This figure, however, shows cuffs; the gown is encircled with an ornamental girdle, and depending

from the mantle on long cords ending in tassels. Underneath runs the legend :

HIC JACET TUMULATA DOMINA JOHANNA BRAHAM VIRDUA AC DEO DEDICATA. QLIM UXOREM JOHANNIS BRAHAM ARMIGERI QUI OBIT XVIII DIE NOVEMBRIS ANNO DOMINI MILLINO CCCCXIX CU JUS ANIME PROPICIETUR DEUS. AMEN.

Below are three shields, of which the dexter bears the husband's arms, the sinister those of Dame Braham's family, and the middle the coats impaled. In neither of these examples is the ring—the most important symbol—displayed on the vowess's finger. This omission may be explained, perhaps, by the fact that it was not buried with her, being, as we have seen, sometimes bequeathed as an heirloom and sometimes left as a gift to the Church.

Notwithstanding the desire of so many husbands that their widows should live "sole, without marriage," it is well known that second and even third marriages were not uncommon in the Middle Ages, and, provided that they did not involve an infraction of some solemn engagement, do not appear to have incurred social censure any more than at present.

ECCLESIASTICAL

CHAPTER III

THE LADY FAST

IT was pointed out as one of the distinctions between vowesses and members of the third orders of the Dominican and Franciscan brotherhoods that the latter were pledged to the observance of fasts from which the former were exempt. Tyndale complains of the "open idolatry" of abstinences undertaken in honour of St. Patrick, St. Brandan, and other holy men of old; and he lays special stress on "Our Lady Fast," which, he explains, was kept "either seven years the same day that her day falleth in March, and then begin, or one year with bread and water." Whatever fasts a vowess might neglect as non-obligatory, it seems probable that she would not willingly forgo any opportunity of showing reverence to the Blessed Virgin, who, in the belief of St. Augustine, had taken vows of chastity before the salutation of the Angel.

It is not a little curious that the Lady Fast, in the forms mentioned by Tyndale, was so far from being enjoined by the Church as to be actually opposed to the decree of the Roman Council of 1078, which indicated Saturday as the day of the week appropriated to the honour of the Blessed Virgin.

This usage was as well understood in the British Isles as elsewhere. Thus, in *Piers Plowman*:

> Lechery said "Alas!" and on Our Lady he cried
> To make mercy for his misdeeds betweer God and his soul,
> With that he should the Saturday seven year thereafter
> Drink but with the duck, and dine but once.

Bower, the continuator of Fordun's *Scotichronicon*, makes it a reproach to lax prelates that they suffer the common people to vary after their own pleasure the days kept as fast days in honour of Mary. In doing so he recalls that on Saturday, the first Easter Eve, she abode unshakenly in the faith, when the apostles doubted. Good reason, therefore, why Saturday should be dedicated to her as a fast. "But now," he continues, "you will see both men and women on a Saturday morning make good dinners, who, on a Tuesday or a Thursday, would not touch a crust of bread, lest they should break the Lady Fast kept after their own fancy."

Tyndale seems to have erred in intimating that the Lady Fast, if of an annual character, was regulated of necessity by the Feast of the Annunciation, or, in the happier, more affectionate phrase of our forefathers, "the Gretynge of Our Ladye." The Blessed Virgin had no fewer than six festivals—those of the Conception, Nativity, Annunciation, Visitation, Purification, and Assumption—any one of which might be made the starting-point of the fast either by the choice of the votary or by the cast of the die. A third method is instanced in the *Popish Kingdom* of Barnabe Googe (1570), actually an English metrical version of a truculent German satire by one Thomas Kirchmeyer, who was scholar

enough to Latinize, or Græcize, his homely patronymic into the more imposing correlative "Naogeorgus." The passage containing the allusion is as follows:

> Besides they keep Our Lady's fast at sundry solemn times,
> Instructed by a turning wheel, or as the lot assigns.
> For every sexton has a wheel that hangeth for the view,
> Mark'd round about with certain days, unto the Virgin due,
> Which holy through the year are kept, from whence hangs down a thread
> Of length sufficient to be touched and to be handled.
> Now when that any servant of Our Lady cometh here
> And seeks to have some certain day by lot for to appear,
> The sexton turns the wheel about, and bids the stander-by
> To hold the thread whereby he doth the time and season try,
> Wherein he ought to keep his fast and every other thing
> That decent is and longing to Our Lady's worshipping.

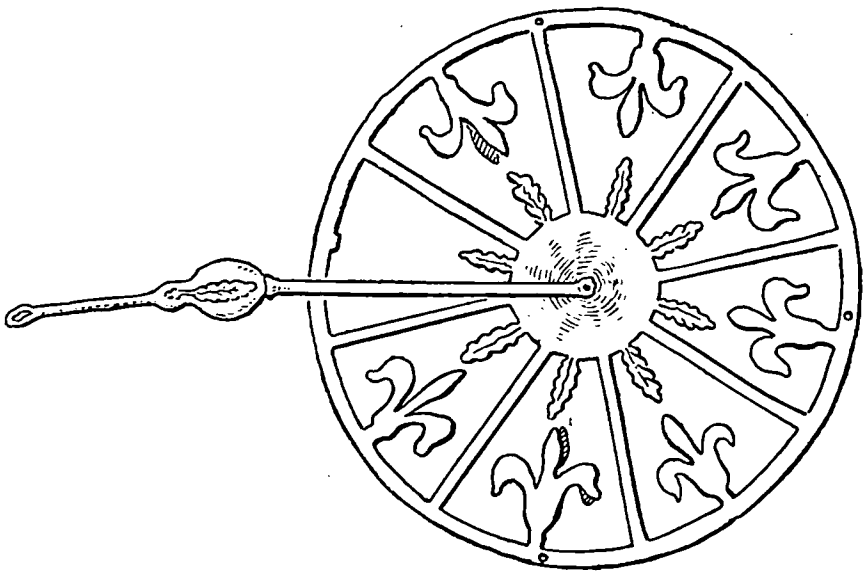
Although, as has been said, the *Popish Kingdom* had a German original, it is an extraordinary fact that no Continental example of the Lady Fast wheel is known to exist. Two English wheels have been preserved—both of them in East Anglian churches: viz., those of Long Stratton, Norfolk, and Yaxley, Suffolk. Of the two the former is the more perfect. That at Yaxley consists of a pair of wheels, cut out of sheet iron, which measure a little over two feet in diameter, and are similar and concentric, but separate. The Long Stratton wheels, on the other hand, have a pin passing through the centre which holds them together, and around which they revolve, each of them independently. To the same pin is attached the forked end of a long pendent handle, which was held by the sexton. Each wheel is pierced with three holes through which strings were passed, the total number coinciding with that of the six feasts sacred to Mary, or possibly to the six days of the

week excluding Sunday, which did not rank as a fast-day.

The instrument was worked in the following manner. Should a devout person desire to keep a Lady Fast, he or she repaired to the church to determine by the aid of the wheel which of the days or anniversaries should be observed. Thereupon the sexton took the wheel, which he either hung up or held at arm's length by means of a ring at the termination of the handle. He then set the wheel in motion, and the votary, standing by, caught at the strings as they spun round. Whichever string was caught decided the question on what day the fast was to be begun, whether on the feast of the Annunciation or that of the Assumption, or any other of the six feasts, or days of the week, of which the several strings were emblematical. The feast of the Assumption was known as Lady Day in Harvest, being observed on the fifteenth of August.

The compromise, which we style the Reformation, at first inclined to the retention of the Saturday fast; and, indeed, the legislature interfered to enforce its more regular observance. In 1548 a remarkable measure was enacted with this object, not so much, it is to be feared, out of any genuine conceit for religion, as for the benefit of the fishing community, whose interests had been injuriously affected by recent ecclesiastical changes.

"Albeit," it recites, "the King's subjects now having a more perfect and clear light of the Gospel and true word of God, through the infinite cleansing and mercy of Almighty God, by the hand of the King's Majesty and his most noble father of famous memory, promulgate, shewed, declared and opened, and thereby perceiving that one day or one kind of



A LADY FAST WHEEL.

meat of itself is not more holy, more pure, or more clean than another, for that all days and all meats be of their nature of one equal purity, cleanness, and holiness, and that all men should by them live to the glory of God, and at all times and for all meats give thanks unto Him, of which meats none can defile Christian men or make them unclean at any time, to whom all meats be lawful and pure, so that they be not used in disobedience or vice; yet forasmuch as divers of the King's subjects turning their knowledge therein to satisfy their sensuality, when they should thereby increase in virtue, have in late time more than in times past, broken and contemned such abstinence which hath been used in the Realm upon the Fridays *and Saturdays*, the Embering days, and other days commonly called Vigils, and in the time commonly called Lent and other accustomed times: the King's Majesty, considering that due and godly abstinence is a means to virtue, and to subdue men's bodies to their soul and spirit, and considering also especially that Fishers, and men using the trade of living by fishing in the sea, may thereby the rather be set on work, and that by eating of fish much flesh shall be saved and increased, and also for divers other considerations and commodities of this realm, doth ordain 'that all statutes and constitutions regarding fasting be repealed, but that all persons neglecting to observe the ordinary fast days—Fridays, *Saturdays*, Ember days, and Lent—be subject to a fine of ten shillings and ten days' imprisonment for the first offence.'".

This measure, so inconsistent with the spirit of the age and so contradictory in its terms, was re-enacted at various dates during the reigns of Elizabeth and James I. It is perhaps the "last

word "s as regards the Lady Fast, but the legislature by no means suspended its vigilance in enforcing abstinence at the proper season. Discussion of post-Reformation fasting, however, or fasting in general, forms no part of our present undertaking.

ECCLESIASTICAL

CHAPTER IV

CHILDREN OF THE CHAPEL

THE fact may not have escaped notice that Domina Alicia Seynt Johan de Baggenet "took the vow of widowhood in the chapel of the Lord of Amberley." Possession of a private chapel was, as it still is, a mark of social distinction. "It was once the constitution of the English," runs a law of King Athelstan, "that the people and their legal condition went according to their merits; and then were the councillors of the nation honoured each one according to his quality, the earl and the ceorl, the thane and the underthane. If a ceorl throve so as to have five hides booked to him, a church, bell-tower, a seat in the borough, and an office in the King's court, from that time forward he was esteemed equal in honour to a thane." Again, the laws of King Edgar relating to tithe ordain "that God's church be entitled to every right, and that every tithe be rendered to the old minster to which the district belongs, and be then so paid, both from the thane's inland and from geneat land, as the plough traverses it. But if there be any thane who on his boc-land has a church at which there is a burial-place, let him give the third part of his own tithe to his church. If any one hath a church at which there is

not a burial-place, then of the same nine parts let him then give to his priest what he will."

Domestic chapels were extremely common all through the Middle Ages. In the parish of Tiverton, Devon, there were at least seventeen, some of them within less than a mile of each other. Allusions to these oratories are found in the registers of the Bishops of Exeter, by whom they were severally licensed for the convenience of the owner, his family, and his tenants. As a rule, they were in rooms of the house or castle, not separate buildings. Andrew Boorde, in his directions for the construction of a sixteenth-century mansion, remarks: "Let the privy chamber be annexed to the great chamber of estate, with other chambers necessary for the building, *so that many of the chambers may have a prospect into the chapel.*"

Great nobles of the post-Conquest period were not content with the services of a priest only. They maintained an establishment of singing men and boys analogous to the vicars-choral and choristers of the present time, who were described as "the gentlemen and children of the chapel." From the household books of the Earl of Northumberland (A.D. 1510-11) we learn that he had "daily abidynge in his household—Gentillmen of the Chapel, ix; viz., the maistre of the Childre, j; Tenors, ij; Counter-tenors, iiij; the Pistoler, j; and oone for the Orgayns; Childer of the Chapell, vj."

Particulars are recorded of the daily allowances of bread, beer, and fish during Lent. On Scambling Days it was usual not to provide regular meals, each having to scramble or shift for himself, but things were otherwise ordered in the mansion of the Percy, where the service of meat and drink "upon Scambling

Days in Lent yerely" was properly seen to. Not only are we furnished with the "Ordre of all suche Braikfasts that shall be lowable daily in my Lordes hous thorowte the yere as well on Flesche days as Fysch days in Lent, and out of Lent," but accounts are supplied of the liveries of wine, white wine and wax, and also of wood and coal, of which the Master and the Children of the Chapel were entitled to one peck *per diem*. The cost of the washing of surplices, etc., was not to exceed a stated sum. "Then shal be paid for the Holl weshing of all manner of Lynnon belonging to the Lordes Chappell for a Holl yere but xvij*s*. iiij*d*. And to be weshed for every Penny iij Surplesses or iij Albes. And the said Surplesses to be weshed in the yere xvj tymes against these Feasts following, &c."

The salaries of the choir were paid at definite intervals, and formed a charge on his lordship's property in Yorkshire. The scale of remuneration was as follows:

"Gentilmen of the Chappell x (as to saye, Two at x marks a pece, iij at iiij*l*. a pece, Two at v marks a pece, Oon at iiij marks, Oon at xl*s*., and Oon at xx*s*.; viz., ij Bassis, ij Tenors and vj Counter-tenors). Childeryn of the Chappell vj, after xxv*s*. a pece. And so the whole somme for full contentacion of the said Chapell wagies for oone hole yere ys—xxxv*l*. xv*s*."

The gentlemen slept two in a bed, as seems to have been the custom for priests also; the children, three in a bed. ("There shall be for vj Prests iij Beddes after ij to a Bedde; for x Gentillmen of the Chapell v Beddes, after ij to a Bedde; for vj Children ij Beddes after iij to a Bedde.")

Not only noblemen, but the Princes of the Church

had their private chapels, for which the services of children were retained. George Cavendish, in his *Life of Wolsey*, gives a glowing account of the Cardinal's palatial appointments, in the course of which he observes: "Now I will declare unto you the officers of his chapel and singing men of the same. First he had there a dean, a great divine, and a man of excellent learning; and a sub-dean, a repeater of the choir, a gospeller and epistler of the singing-priests, and a master of the children [therefore, of course, children]; in the vestry a yeoman and two grooms, besides other retainers that came thither at principal feasts. . . . And as for the furniture of the chapel it passeth my weak capacity to declare the number of the costly ornaments and rich jewels that were occupied in the same, for I have seen in procession about the hall forty-four rich copes of one settle worn, besides the candlesticks and other necessary ornaments to the furniture of the same." Such were the sumptuous surroundings in which "children of the chapel" were wont sometimes to perform their office.

An element of distinction enjoyed by peer and prelate was not likely to be absent from the first estate of the realm; and, in point of fact, the phrase "children of the chapel," so far as it is known, is more commonly associated with the King's court than any of the castles or episcopal palaces of the land. Certain of the King's "Gentlemen of the Chapel" seem to have received payment in money, including extraordinary fees, and provided for themselves, whilst others had board and lodging. The following table, though less complete than the Northumberland accounts, throws light on the rate of requital:

	£	s.	d.
Master of the children, for his wages and board wages. . . .	30	0	0
Gospeller, for wages	13	6	8
Epistoler, „ „	13	6	8
Verger, „ „	20	0	0
Yeomen of the Vestry. . . .	10	0	0
	10	0	0
Children of the Chapel, ten . . .	56	13	4

Another ordinance states that "The Gentlemen of the Chapell, Gospeller, Episteller, and Sergeant of the Vestry shall have from the last day of March forward for their board wages, everie of them, 10*d.* per diem; and the Yeomen and Groomes of the Vestry, everie of them, 2*s.* by the weeke." When not on board wages, they had "Bouche of Court," like the physicians. "Bouche of Court" signified the daily livery or allowance of food, drink, and fuel, and this, in the case of the Master of the Children, exceeded that of the surgeons to the value of about £1 1*s.* per annum. Thus it will be seen that the style "Gentlemen," as applied to the grown-up members of the choir, was not merely complimentary, but indicative of their actual status.

Meals were served at regular hours. "It is ordeyned that the household, when the hall is kept, shall observe certeyne times for dinner and souper as followeth: that is to say, the first dynner in eating dayes to begin at tenn of the clock, or somewhat before; and the first souper at foure of the clock on worke dayes."

The duties of the choir also are plainly laid down: "Forasmuch as it is goodly and honourable that

there should be alwayes some divine service in the court . . . when his grace keepeth court and specially in riding journeys: it is ordeyned that the master of the children and six men . . . shall give their continual attendance in the King's court, and dayly in the absence of the residue of the chappell, to have a masse of our Lady before noone, and on Sundayes and holy dayes masse of the day besides our Lady masse, and an anthem in the afternoone."

It was part of the business of the Master of the Children to instruct his young charges in "grammar, songes, organes, and other vertuous things"; and, on the whole, the lot of the choristers might have been deemed enviable. It is evident, however, that it was not always regarded in that light, for a custom existed of impressing children. This practice was authorized by a precept of Henry VI. in 1454, and one of its victims was Thomas Tusser, afterwards author of *Five Hundred Points of Good Husbandry*, who thus alludes to the matter:

> There for my voice I must (no choice)
> Away of force, like posting horse;
> For sundry men had placards then
> Such child to take.

Moreover, it has been shrewdly suspected that the whipping-boy, who vicariously atoned for the sins of a prince of the blood—in other words, was thrashed, when he did wrong—was picked from the Children of the Chapel. Certainly Charles I. had such a whipping-boy named Murray; and judging from this instance, the expedient was not commended by its results.

Members of the choir were expected to be persons

of exemplary life and conversation, to ensure which state of things there was a weekly visitation by the Dean. Every Friday he sought out and avoided from office "all rascals and hangers upon thys courte." The tone of discipline, to conclude from the poems of Hugh Rhodes, was undoubtedly high; and, whatever difficulties he may have encountered in training the boys to his own high standards, his *Book of Nurture* must always possess considerable value as a reflex of the moral and social ideals of a Master of the Children in the sixteenth century.

Rhodes's successor in the days of Elizabeth was Richard Edwards, a man of literary taste and the compiler of a *Paradise of Dainty Devices.* The Master had now a salary of forty pounds a year; the Gentlemen nineteen pence a day, in addition to board and clothing; and the Children received largesse at high feasts and on occasions when their services were used for purposes apart from their ordinary duties. In this way the Chapel Royal is closely connected with the rise of the English drama. Edwards wrote light pieces for the children to act before Her Majesty, and encouraged by success, fell to composing set comedies, which were also performed by the boys, under his instructions, in the presence of the Court.

We have limited our retrospect mainly to the Tudor period. As an extension of the subject would call for more space than we have at our disposal, those who desire more information concerning the "Children of the Chapel" will do well to consult a recent work entitled *The King's Musick* (edited by H. C. de Lafontaine: Novello & Co.), which carries on the record into the age of the Stuarts. Entries cited in this excellent compilation

relate to eminent English composers. In December 1673, for example, there was a "warrant to pay Henry Purcell, late one of the children of his Majesty's Chappell Royall, whose voyce is changed and gone from the Chappell, the sum of £30 by the year, to commence Michaelmas, 1673." This was in consequence of the sensible custom of retaining as supernumeraries boys who had given evidence of musical ability. Such is certainly true of Purcell, who, at the early age of eleven, had shown promise of his future career by an ode called "The Address of the Children of the Chapel Royal to the King and their Master, Captain Cooke, on His Majestie's Birthday, A.D. 1670, composed by Master Purcell, one of the Children of the said Chapel."

There are numerous references to the Chapel Royal in Pepys' *Diary*, of which let the following suffice:

Feb. 23, 1661.—"To Whitehall with Mr. Childe, and there did hear Captain Cooke and his boys make trial of an anthem against to-morrow."

Sept. 14, 1662.—"To Whitehall Chapel, where sermon almost done, and I heard Captain Cooke's new musique. This is the first day of having vialls and other instruments to play a symphony between every verse of the anthem, but the musique is more full than it was last Sunday, and very fine it is. But yet I could discern Captain Cooke to overdo his part at singing, which I never did before."

ECCLESIASTICAL

CHAPTER V

THE BOY-BISHOP

MENTION has been made of Hugh Rhodes and his *Book of Nurture.* It is pretty evident that this master of music was attached to the older form of faith, since he published in Queen Mary's reign a poem bearing the extravagant title: "The Song of the Chyld-Bysshop, as it was songe before the Queen's Maiestie in her priuie chamber at her mannour of Saint James in the feeldes on Saynt Nicholas' Day and Innocents' Day this yeare now present by the chylde bisshope of Poules church with his company. Londini in ædibus Johannis Cawood typographi reginæ, 1555." This effusion Warton derides as a "fulsome panegyric" on the Queen's devotion; and the censure is not wholly unjust, since the author, without much regard for accuracy, likens that least lovable of our sovereigns to Judith, Esther, and the Blessed Virgin. Meanwhile, who or what was the "Chyld-Bysshop," or, as he is usually styled, the Boy-Bishop?

In the first place it may be noted that the Latin equivalent of the phrase was not, as might be expected, *Episcopus puerilis*, but *Episcopus puerorum*, suggesting that the boy, if boy he was, was elevated above his compeers and possessed perhaps some

jurisdiction over them. There is no question of the access of dignity, but the amount of authority enjoyed by him would have depended on the humour of his fellows, and boys are not always docile subjects even of rulers of their own election. This, however, is a minor consideration, since the Boy-Bishop, when we first make his acquaintance, has already emerged from the obscurity of school and playground, and made good his claim to the homage of superiors in age and station. Hence the term "Boy-Bishop" appears to define more accurately than its Latin analogue the rank and privileges of the immature prelate.

It seems to lie in the nature of things that the Boy-Bishop was originally an institution of the boys themselves, the chief figure in a game in which they aped, as children so commonly do, the procedure of their elders, and that, in course of time, those elders, for reasons deemed good and sufficient, extended their patronage to the innocent parade, and made it a constituent of their own festal round.

In tracing the migration of the custom from the precincts to the interior of the church we must not forget the tradition of the Roman Saturnalia, with the season and spirit of which it accorded, and to which the Christian festival, with its greater purity and decorum, may have been prescribed as an antidote. The pagan holiday was held on December 17, and as the Sigillaria formed a continuation of it, the joyous celebration endured a whole week. The Boy-Bishop's term of office was yet longer, extending from St. Nicholas' Day (December 6) to Holy Innocents' Day (December 28).

The distinctive feature of the Saturnalia was the

inversion of ordinary relationships; the world was turned upside down, and the licence that prevailed, by dint of long usage and inviolable sentiment, imparted to the merry-making a rough and even immoral character. Slaves assumed the position of masters, and masters of slaves; and the general nature of the observance is aptly described by the patron deity in Lucian's play on the subject: "During my reign of a week no one may attend to his business, but only to drinking, singing, playing, making imaginary kings, playing servants at table with their masters."

The advent of Christianity was impotent to arrest the annual scenes of disorder; and, in some form or another—sometimes tolerated, sometimes the object of the Church's anathema—the tradition held its own down through the dark ages, and we meet with the substance of the Saturnalia, during the centuries immediately preceding the Reformation, in the burlesque festivals with which the rule of the Boy-Bishop has been often identified. We shall see presently how far this judgment is correct. An example will, no doubt, readily recur to the reader from a source to which we owe so many impressions of the Middle Ages, some true, others false or at least exaggerated—we mean, the historical romances of Sir Walter Scott. That writer has introduced into *The Abbot* an Abbot of Unreason, and he explains in a note that "The Roman Catholic Church connived at the frolics of the rude vulgar, who, in almost all Catholic countries, enjoyed, or at least assumed, the privilege of making some Lord of the Revels, who, under the name of the Abbot of Unreason, the Boy-Bishop, or the President of Fools, occupied the churches, profaned the holy

places by a mock imitation of the sacred rites, and sang indecent parodies of the hymns of the church." The last touch, at any rate, may be safely challenged as untrue, and the whole picture has the appearance of being largely overdrawn. This is certainly the case as regards England, though there is evidence that on the Continent the Boy-Bishop celebration was, at certain times and in certain places, not free from objectionable features. In 1274 the Council of Salzburg was moved to prohibit the "noxii ludi quos vulgaris eloquentia Episcopus puerorum appellat" on the ground that they had produced great enormities. Probably this sentence referred to the accessories, such as immoral plays, but it is quite possible that the Boy-Bishop ceremonies themselves had degenerated into a farce. As the *Rex Stultorum* festival was prohibited at Beverley Minster in 1371, we must conclude that similar extravagance and profanity had crept into Yuletide observances in this country. The festival of the Boy-Bishop, however, was conducted with a decency hardly to be expected in view of its apparent associations. It would seem, indeed, to have been an impressive and edifying function, and that reasonable exception can be taken to it only on the score of childishness, and the absence of any warrant from Scripture, apart from the rather doubtful sanction of St. Paul's words, "The elder shall serve the younger."

There are weighty considerations on the other side. The mediæval Church derived stores of strength from its sympathetic attitude towards women and children and the illiterate; and there was a sensible loss of vitality and interest when the ministry of the Church was curtailed to suit the common sense of a handful of statesmen, scholars,

and philosophers. At the time the festival was abolished, opinion was divided even among the leaders of reform. Thus Archbishop Strype openly favoured the custom, holding that it "gave a spirit to the children," and was an encouragement to them to study in the hope of attaining some day the real mitre. Broadly speaking, then, the Boy-Bishop festival is evidence of the tender condescension of Holy Mother Church to little children, and it does not stand alone. At Eyton, Rutlandshire, and elsewhere, children were allowed to play in church on Holy Innocents' Day, possibly in the same way as at the "Burial of the Alleluia" in a church at Paris, where a chorister whipped a top, on which the word "Alleluia" was inscribed, from one end of the choir to the other. As Mr. Evelyn White points out, this "quickening of golden praise," by its union of religious service and child's play, exactly reproduces the conditions of the Boy-Bishop festival. Certain it is that the festival was extraordinarily popular. There was hardly a church or school throughout the country in which it was not observed, and, if we turn to the Northumberland Book cited in the foregoing chapter, we shall find that provision was made for its celebration in the chapels of the nobility as well. The inventory is as follows:

"*Imprimis*, myter well garnished with perle and precious stones with nowches of silver and gilt before and behind.

Item, iiij rynges of silver and gilt with four redde precious stones in them.

Item, j pontifical with silver and gilt, with a blew stone in hytt.

Item, j owche broken silver and gilt, with iiij precious stones and a perle in the myddes.

Item, A Crosse with a staf of coper and gilt with the ymage of St. Nicholas in the myddes.

Item, j vesture redde with lyons of silver with brydds of gold in the orferores of the same.

Item, j albe to the same, with stars in the paro.[1]

Item, j white cope stayned with cristells and orferes redde sylke with does of gold and white napkins about their necks.

Item, j stayned cloth of the ymage of St. Nicholas.

Item, iiij copes blue sylk with red orferes trayled with whitt braunches and flowers.

Item, j tabard of skarlett and a hodde thereto lyned with whitt sylk.

Item, A hode of scarlett lyned with blue sylk."

There is an entry in the book showing upon what terms the custom was observed in the house of a great noble. When chapel was kept for St. Nicholas —St. Nicholas was, of course, the patron saint of boys—6*s.* 8*d.* was assigned to the Master of the Children for one of the latter. When, on the contrary, St. Nicholas "com out of the towne where my lord lyeth and my lord kepe no chapel," the amount is reduced to 3*s.* 4*d.*

Abbeys, cathedrals, and parish churches were equally forward in their recognition of the custom, and strove to celebrate it on a scale of the utmost splendour and magnificence. A list of ornaments for St. Nicholas contained in a Westminster inventory of the year 1388 comprises a mitre, gloves, surplice, and rochet for the Boy-Bishop, together with two albs, a cope embroidered with griffins and other beasts and playing fountains, a velvet cope with the new arms of England, a second mitre and

[1] Paro = apparel in the technical sense.

a ring. In 1540 mention occurs of the "vjth mytre for St. Nicholas bisshope," and "a great blewe cloth with kyngs on horsse back for the St. Nicholas cheyre." At St. Paul's Cathedral twenty-eight copes were employed not only for the Boy-Bishop and his company, but for the Feast of Fools. The earliest inventory of the church—that of 1245—speaks of a mitre, the gift of John de Belemains, Prebendary of Chiswick, and a rich pastoral staff for the use of the Boy-Bishop. At York Minster were kept a "cope of tissue" for the Boy-Bishop, and ten for his attendants, while an inventory made in 1536 at Lincoln refers to "a coope of rede velvett with rolles and clowdes ordeyned for the barne bisshop with this scripture THE HYE WAY IS BEST." Typical of many other places, the custom was observed at Winchester, Durham, Salisbury, and Exeter Cathedrals; at the Temple Church, London (1307); St. Benet-Fynck; St. Mary Woolnoth; St. Catherine, near the Tower of London; St. Peter Cheap; St. Mary-at-Hill, Billingsgate; Rotherham; Sandwich, St. Mary; Norwich, St. Andrew's and St. Peter Mancroft; Elsing College, Winchester; Eton and Winchester Colleges; Magdalen College, Oxford, and King's College, Cambridge; Witchingham, Norfolk (1547); Great St. Mary, Cambridge (1503); Hadleigh, Suffolk; North Elmham, Norfolk (1547). When the goods of Great St. Mary, Cambridge, were sold, in May 1560, among the rest were the following: "*It.* ye rede cote and qwood yt St. Nicholas dyd wer the color red. *It.* the vestement and cope yt Seynt Nicholas dyd wer. Also albs for the children."

Recapitulating, the vestments and ornaments of the Boy-Bishop and his attendants, as gleaned from

these and similar sources, were: (i) Mitre; (ii) Crosier or Pastoral Staff; (iii) Ring; (iv) Gloves; (v) Sandals; (vi) Cope; (vii) Pontifical; (viii) Banner; (ix) Tabard; (x) Hood; (xi) Cloth for St. Nicholas' Chair; (xii) Alb; (xiii) Chasuble; (xiv) Rochet; (xv) Surplice; (xvi) Tunicle; (xvii) Worsted Robe.

Usually, the Boy-Bishop was chosen from the choristers of the cathedral, collegiate or other church by the choristers themselves; but at York, after 1366, and possibly elsewhere, the position fell, as of right, to the senior chorister. The date of the election was the Eve of St. Nicholas, when the boys assembled for an entertainment, and gloves were presented to the Boy-Bishop. On St. Nicholas' Day the boys accompanied the youthful prelate to the church; and we learn from the Sarum Use that the order in which the procession entered the choir was as follows: First the Dean and Canons, then the Chaplain, and lastly the Boy-Bishop and his Prebendaries, who thus took the place of honour. The Bishop being seated, the other children ranged themselves on opposite sides of the choir, where they occupied the uppermost ascent, whilst the Canons bore the incense and the Petit Canons the tapers. The first vespers of their patron saint having been sung by the boys, they marched the same evening through the precincts, or parish, the Bishop bestowing his fatherly blessings and such other favours as were becoming his dignity.

The statutes of St. Paul's Cathedral show that, as early as 1262, the rules underwent some modification. It was thought that the celebration tended to lower the reputation of the church; so it was ordained that the Boy-Bishop should select his own ministers, who were to carry the censer and the

A MEDIÆVAL BISHOP

(From MS. Royal 2 A. xxii f. 221a)

tapers, and they were to be no longer the Canons, but "Clerks of the Third Form," *i.e.* his fellow-choristers. But the practice remained for the Boy-Bishop to be entertained on the Eve of St. John the Evangelist, either at the Deanery or at the house of the Canon-in-residence. Should the Dean be the host, fifteen of the Boy-Bishop's companions were included in the invitation. The Dean, too, found a horse for the Boy-Bishop, and each of the Canons a horse for one of his attendants, to enable them to go in procession—a show formally abolished by proclamation on July 25, 1542, but, nevertheless, retained for some years owing to the attachment of the citizens to the ancient custom.

The question has been raised—Did the Boy-Bishop say mass? The proclamation of Henry VIII. distinctly affirms that he did, but there is reason to suspect the truth of the statement. In the York Missal, published by the Surtees Society, there is a rubric directing the Boy-Bishop to occupy the episcopal throne during mass—a proof that he cannot have been the celebrant. But the Boy-Bishop, if he did not officiate at the altar, unquestionably preached the sermon. The statutes of Dean Colet for the government of his school enjoin that "all the children shall every Childermas Day come to Paule's Churche, and heare the chylde bishop sermon, and after be at hygh masse and each of them offer 1*d.* to the chylde bysshop." Specimens of the sermons preached on Holy Innocents' Day have come down to us from the reigns of Henry VIII. and Mary, and are of extreme interest. They, indeed, go far to justify the custom as a mode of inculcating virtue, and, particularly, reverence in the minds of the auditors. The earlier discourse appears

to have been prepared by one of the Almoners of St. Paul's, and the "bidding prayer" contains a quaint allusion to "the ryghte reverende fader and worshypfull lorde my broder Bysshop of London, your dyocesan, also my worshypfull broder, the Deane of this Cathedral Churche." The later discourse was pronounced by "John Stubs, Querester, on Childermas-Day at Gloceter, 1558," and, most appropriately, based on the text, "Except you be convertyd and made lyke unto lytill children," etc. Referring to the "queresters" and children of the song school, the preacher remarks, with a touch of delightful humour, "Yt is not so long sens I was one of them myself"; and, in explaining the significance of Childermas, adverts to the Protestant martyrs, who, alas! are without "the commendacion of innocency."—It may be added that, according to the testimony of the Exeter *Ordinale*, the Boy-Bishop, on St. Nicholas' Day, censed the altar of the Holy Innocents, recited prayers, read the Little Chapter at Lauds "in a modest voice," and gave the Benediction.

We have seen that Dean Colet required his scholars to contribute, each one, a penny to the Boy-Bishop. At Norwich annual payments were made by all the officials of the cathedral church to the Boy-Bishop and his clerks on St. Nicholas' Day, and the expenses of the feast were defrayed by the Almoner out of the revenues of the chapter. An account of Nicholas of Newark, Boy-Bishop of York in 1396, shows that, besides gifts in the church, donations were received from the Canons, the monasteries, noblemen, and other benefactors. On the Octave he repaired, accompanied by his train, to the house of Sir Thomas Utrecht, from whom he obtained

"iij*s.* iiij*d.*"; on the second Sunday he went still farther afield, including in his perambulation the Priories of Kirkham, Malton, Bridlington, Walton, Baynton, and Meaux. *En route*, he waited on the Countess of Northumberland at Leconfield, and was graciously rewarded with a gold ring and twenty shillings.

These "visitations" seem to have been characterized by feasting and merriment and some undesirable mummery. Puttenham, in his *Arte of Poesie* (1589), observes: "On St. Nicholas' night, commonly, the scholars of the country make them a Bishop, who, like a foolish boy, goeth about blessing and preaching with such childish terms as make the people laugh at his foolish counterfeit." In some quarters regulations were in force to preclude such levity. At Exeter, for example, one of the Canons was appointed to look after the Boy-Bishop, who was to have for his supper a penny roll, a small cup of mild cider, two or three pennyworths of meat, and a pennyworth of cheese or butter. He might ask not more than six of his friends to dine with him at the Canon's room, and their dinner was to cost not more than fourpence a head. He was not to run about the streets in his episcopal gloves, and he was obliged to attend choir and school the next day like the other choristers.

It may be remarked that the Boy-Bishop proceedings had their counterpart in the girls' observance of St. Catherine's Day; and the phrase "going a-Katherine" expressed the same sort of alms-seeking as attended the ceremonies in honour of St. Nicholas.

In its palmy days the festival of the Boy-Bishop was favoured not only by the people, but by the monarch. Edward I. and Henry VI. gave their

patronage to the custom, and the latter is said to have followed the example of his progenitors in so doing.

However, in 1542, Henry VIII. "by the advys of his Highness' counsel," saw fit to order its abolition, which he did in the following terms:

"Whereas heretofore dyuers and many superstitions and chyldysh obseruances haue been used, and yet to this day are obserued and kept, in many and sundry partes of this realm, as vpon St. Nicholas, Saint Catherine, Saint Clement, the holie Innocents, and suchlike holie daies, children be strangelie decked and apparayled to counterfeit Priests, Bishopes, and Women, and so be ledde with Songes and dances from house to house, blessing the people and gathering of money; and boyes do singe masse and preache in the pulpitt, with other such onfittinge and inconuenient vsages which tend rather to derysyon than to the true glorie of God, or honour of his Sayntes: the Kynges maiestie, therefore, myndynge nothinge so muche as to aduance the true glory of God without vain superstition, wylleth and commandeth that from henceforth all such superstitious obseruations be left and clerely extinguished throu'out all his realme and dominions for as moche as the same doth resemble rather the vnlawfull superstition of gentilitie than the pure and sincere religion of Christe."

The allegation that boys dressed up as women is confirmed by a Compotus roll of St. Swithin's Priory at Winchester (1441), from which it appears that the boys of the monastery, along with the choristers of St. Elizabeth's Collegiate Chapel, near the City, played before the Abbess and Nuns of St. Mary's Abbey—attired "like girls."

THE TRIAL OF JESUS

(From a drawing by David Fee in Sharp's Dissertation on the Coventry Plays)

The custom was restored by an edict of Bishop Bonner on November 13, 1554, much to the satisfaction of the populace; and the spectacle of the Boy-Bishop riding *in pontificalibus*—this was in 1556—all about the Metropolis gave currency to the saying—"St. Nicholas yet goeth about the City." Foxe tells us that at Ipswich the Master of the Grammar School led the Boy-Bishop through the streets "for apples and belly-cheer; and whoso would not receive him he made heretics, and such also as would not give his faggot for Queen Mary's child." (By this expression, which was common during this reign, was intended the Boy-Bishop; the Queen had, of course, no child of her own.) Amidst the sundry and manifold changes that marked the accession of Elizabeth the Boy-Bishop again went down; and the memory of the festival lingered only in certain usages like that at Durham, where the boys paraded the town on May-day, arrayed in ancient copes borrowed from the Cathedral.

On one or two points connected with the subject there prevails some degree of misapprehension, and thus it will be well—very briefly—to touch upon them. It is not now believed that the effigy in Salisbury Cathedral—"the child so great in clothes"—which led to the publication, in 1646, of Gregorie's famous treatise, is that of a Boy-Bishop, who died during his term of office and was buried with episcopal honours. There are similar small effigies of knights and courtiers. Nor, again, does it seem correct to state that the Boy-Bishop might present to any prebend that became vacant between St. Nicholas' and Holy Innocents' day. This usage, if it existed at all, was apparently confined to the Church of Cambray.

On the other hand, the Eton Ad Montem ceremony has the look of genuine descent from the older festival, with which it has numerous features in common. The Boy-Bishop custom, it will be remembered, was observed at the College.''

Finally, reference may be made to the coinage of tokens, some of them grotesque, which bore the inscription MONETA EPI INNOCENTIUM, or the like, together with representations of the slaughter of the Innocents, the Bishop in the act of giving his blessing, and similar scenes. Opinions differ as to the purpose for which these tokens, which date from the fourteenth and fifteenth centuries, were struck, but it is extremely probable that they were designed to commemorate the Boy-Bishop solemnity. Barnabe Googe's *Popish Kingdom* tells of

"St. Nicholas money made to give to maidens secretlie,"

and in the imperfect state of human society this may have been, at times, their incongruous destiny.

ECCLESIASTICAL

CHAPTER VI

MIRACLE PLAYS

THERE is a palpable resemblance between the subject just quitted and that most characteristic product of the Middle Ages—the Miracle Play. It may be observed at the outset that instruction in those days, when reading was the privilege of the few, was apt to take the form of an appeal to the imagination rather than the reasoning faculty, and of all the aids to imagination none has ever been so effective as the drama. The Boy-Bishop celebration was not only the occasion of plays which sometimes necessitated the strong hand of authority for their suppression—it was distinctly dramatic in itself. Miracle plays represent a further stage of development, in which a rude and popular art shook itself free from the trammels of ritual, outgrew the austere restrictions of sacred surroundings, and yet kept fast hold on the religious tradition on which it had been nourished, and which remained to the last its supreme attraction.

The liturgical origin of the Miracle Play may almost be taken for granted, and the single question that is likely to arise is whether the custom evolved itself from observances connected with Easter, or Christmas, or both festivals in equal or varying measure. Circum-

stances rather point to Paschal rites as the matrix of the custom. The Waking of the Sepulchre anticipates some of the features of the Miracle Play, while the dialogue may have been suggested by the antiphonal elements in the church services, and specifically by the colloquy interpolated between the Third Lesson and the Te Deum at Mattins, and repeated as part of the sequence *Victimae paschalis laudes*, in which two of the choir took the parts of St. Peter and St. John, and three others in albs those of the Three Maries. In the York Missal, in which this colloquy appears at length, its use is prescribed for the Tuesday of Easter week.

Springing apparently from these germs, the religious drama gradually enlarged its bounds until it not only broke away from the few Latin verses of its first lisping, but came to embrace a whole range of Biblical history in vernacular rhyme. The process is so natural that we need scarcely look for contributory factors, and the influence of such experiments as the Terentian plays of the Saxon nun Hroswitha in the tenth century may be safely dismissed as negligible, or, at most, advanced as proof of a broad tendency, evidence of which may be traced in the "infernal pageants," to which Godwin alludes in his *Life of Chaucer*, and which, as regards Italy, are for ever memorable in connexion with the Bridge of Carrara—a story familiar to all students of Dante. These "infernal pageants" were concerned with the destiny of souls after death, and their scope being different from that of the Miracle Plays, they are adduced simply as marking affection for theatrical display in conjunction with religious sentiment.

As far as can be ascertained, the earliest miracle play ever exhibited in England—and here it may be

observed that such performances probably owed their existence or at least considerable encouragement to the system of religious brotherhood detailed in our opening chapter—was enacted in the year 1110 at Dunstable. Matthew Paris informs us that one Geoffrey, afterwards Abbot of St. Albans, produced at the town aforesaid the Play of St. Catherine, and that he borrowed from St. Albans copes in which to attire the actors. This mention of copes reminds us of the Boy-Bishop, and is one of the symptoms indicating community of origin. To this may be added that miracle plays were at first performed in churches, and, as we shall hereafter see, in some localities were never removed from their original sphere. The clergy also took an active share in the performances, as long as they were confined to churches; but on their emergence into the streets, Pope Gregory forbade the participation of the priests in what had ceased to be an act of public worship. This was about A.D. 1210. From that time Miracle Plays were regarded by the straiter sort with disfavour, and Robert Manning in his *Handlyng Sinne* (a translation of a Norman-French *Manuel de Péché*) goes so far as to denounce them, if performed in "ways or greens," as "a sight of sin," though allowing that the resurrection may be played for the confirmation of men's faith in that greatest of mysteries. Such prejudice was by no means universal; in 1328—more than a hundred years later—we find the Bishop of Chester counselling his spiritual children to resort "in peaceable manner, with good devotion, to hear and see" the Miracle Plays.

We saw that the earliest religious drama known to have been performed in this country was one on St. Catherine. William Fitzstephen, in his *Life of*

St. Thomas à Becket, written in 1182, brings into contrast with the pagan shows of Old Rome the "holier plays" of London, which he terms "representations of the miracles wrought by the holy confessors or of the sufferings whereby the constancy of the martyrs became gloriously manifest." Thus we perceive how the term "miracle" attached itself to this species of theatrical exhibitions. Probably, towards the commencement of the twelfth century, French playwrights fastened on the miracles of the saints as their special themes, and, by force of habit, the English public in ensuing generations retained the description, though subjects had come to be chosen other than the marvels of the martyrology. Dr. Ward would limit the term "miracle play" to those dramas based on the legends of the Saints, and would describe those drawn from the Old and New Testaments as "mysteries" in conformity with Continental usage. The distinction is logical, but its acceptance would practically involve the sacrifice of the former term, since the Dunstable play of St. Catherine, the plays founded on the lives of St. Fabyan, St. Sebastian, and St. Botolph, which were performed in London, and those on St. George, acted at Windsor and Bassingbourn—no others are recorded—have all perished.

According to the "Banes," or Proclamation, of the Chester Plays, at the end of the sixteenth century, the cycle of plays acted in that city dates from the mayoralty of John Arneway (1268-76), and the author was Randall Higgenet, a monk of Chester Abbey. These statements are, for various reasons, open to impeachment. For one thing, Arneway's term is incorrectly assigned to the years 1327-8—a far more probable date for the plays,

though there is no sort of certainty on the subject, and, in the nature of things, a cycle of plays is more likely to have grown up than to have been the work of a single hand. The later date is more probable, because the re-institution of the Corpus Christi festival by the Council of Vienne in 1311 has an important bearing on the annexation of the Miracle Play by the trade-gilds, and it was only on their assumption of responsibility that performances on the scale of a cycle of plays could have been contemplated, or possible.

There are four great English cycles—those of Chester, York, Wakefield, and Coventry. By a cycle is meant a series of plays forming together what may be termed an encyclopædia of history; it was attempted to crowd into one short day "mater from the beginning of the world." This ambitious programme bespoke the interested co-operation of many persons, and the gilds, embracing it with enthusiasm, transformed the Corpus Christi festival into an annual celebration marked by gorgeous pageants. The word "pageant," which appears to be etymologically related to the Greek πῆγμα, is technical in respect of Miracle Plays, and, in this connexion, is thus defined by Archdeacon Rogers:

"A high scafolde with two rowmes, a higher and a lower, upon four wheeles. In the lower they apparelled them selves, and in the higher rowme they played, beinge all open on the tope, that all behoulders might heare and see them."

The pageants were constructed of wood and iron, and so thoroughly, that it was seldom that they needed to be renewed. In the floor of the stage were trap-doors covered with rushes. The whole was supported on four or six wheels so as to

facilitate movement from point to point; and as the Miracle Plays were essentially peripatetic—within, at least, the bounds of a particular town, and sometimes beyond—this was a very necessary provision.

Each pageant had its company. The word "company" here is not exactly synonymous with "gild," for several gilds might combine for the object of maintaining a pageant and training and entertaining actors, and the composition of the company varied according to the wealth or poverty, zeal or indifference, of different gilds. Thus it came to pass that the number of pageants, in the same city, was subject to change, companies being sometimes subdivided, and at other times amalgamated; and in the latter event the actors undertook the performance of more scenes than would otherwise have fallen to their share. Commonly speaking, there was probably no lack, whether of funds or players, at any rate as regards the principal centres. The cycles were the pride of the city, and it would have been a point of honour with the members of the several companies not to allow themselves to be outclassed by their competitors.

To enumerate the gilds taking part in the Miracle Plays is tantamount to making an inventory of industrial crafts at the close of the Middle Ages. The "Order of the Pagents of the Play of Corpus Christi at York," compiled by Roger Burton, the town clerk, and comprising a list of the companies with their respective parts, yields the following analysis: Tanners, plasterers, card-makers, fullers, coopers, armourers, gaunters (glovers), shipwrights, pessoners (fishmongers), mariners, parchment-makers, book-binders, hosiers, spicers, pewterers, founders, tylers, chandlers, orfevers (goldsmiths), marshals

(shoeing-smiths), girdlers, nailers, sawyers, spurriers, lorimers (bridle-makers), barbers, vintners, fevers (smiths), curriers, ironmongers, plumbers, pattern-makers, pouchmakers, bottlers, cap-makers, skinners, cutlers, bladesmiths, sheathers, scalers, buckle-makers, horners, bakers, cordwainers, bowyers, fletchers (arrow-featherers), tapisers, couchers, littesters (dyers), cooks, water-leaders, tilemakers, millers, twiners, turners, tunners, pinners, latteners, painters, butchers, poulterers, sellers (sadlers), verrours (glaziers), fuystours (makers of saddle-trees), carpenters, winedrawers, brokers, wool-packers, scriveners, luminers (illuminators), questors (pardoners), dubbers, tallianders (tailors), potters, drapers, weavers, hostlers and mercers.

The subjects of the plays were the story of the Creation, the Fall, the Deluge, the Sacrifice of Isaac, the incidents preceding the Birth of Christ, the Nativity, and in pretty regular sequence, the chief events of our Lord's life, to the Ascension; and, finally, the Assumption of the Blessed Virgin. As a rule it is hard to discern any connection between the nature of a scene and the craft or crafts representing it, but the assignment of the pageant in which God warns Noah to make an ark, to the shipwrights, and of its successor, in which the patriarch appears in the Ark, to the "pessoners" and mariners has an obvious propriety, and must have conduced to the—not historical, but conventional—realism which was the aim of the miracle artists.

The whole town was made to serve as a huge theatre, and the many pageants proceeded in due order from station to station. "The place," says Archdeacon Rogers—he is speaking of Chester—"the place where they played was in every streete. They

begane first at the abay gates and when the first pagiant was played, it was wheeled to the highe crosse before the mayor, and so to every streete; and soe every streete had a pagiant playinge before them at one time, till all the pagiantes for the daye appoynted weare played; and when one pagiant was neere ended word was broughte from streete to streete, that soe they might come in place thereof excedinge orderlye, and all the streetes have their pagiantes afore them all at one time playeing togeather, to se which playe was greate resorte, and also scafoldes and stages made in the streetes in those places where they determined to playe their pagiantes."

Should the supply of pageants be limited, different scenes were acted in different parts of the same stage; and actors who were awaiting or had ended their parts, stood on the stage unconcealed by a curtain. In more elaborate performances a scene like the "Trial of Jesus" involved the employment of two scaffolds, displaying the judgment-halls of Pilate and Herod respectively; and between them passed messengers on horseback. The plays contain occasional stage directions—*e.g.* "Here Herod shall rage on the pagond." We find also rude attempts at scene-shifting, of which an illustration occurs in the Coventry Play of *The Last Supper*:

"Here Cryst enteryth into the hous with his disciplis and ete the Paschal lomb; and in the mene tyme the cownsel hous beforn seyd xal sodeynly onclose, shewynge the buschopys, prestys, and jewgys syttyng in here astat, lyche as it were a convocacyon."

And again:

"Here the Buschopys partyn in the place, and eche of hem here leve be contenawns resortyng eche man to his place with here meny to take Cryst;

and than xal the place that Cryst is in sodeynly unclose round abowt, shewying Cryst syttyng at the table, and hise dyscypulis eche in ere degré. Cryst thus seyng."

The outlay on these plays was necessarily large, and the accounts of gilds and corporations prove that not only were considerable sums expended on the dresses of the actors, but the latter received fees for their services. The fund needed to meet these charges was raised by an annual rate levied on each craftsman—called "pageant money"—and varying from one penny to fourpence. The cost of housing and repairing the pageant, as well as the refreshment of the performers at rehearsals, would also come out of this fund. As the actors were paid, they were expected to be efficient, and the duty of testing their qualifications was delegated either to a pageant-master or to a committee of experienced actors. A York ordinance dated April 3, 1476, shows that four of "the most cunning, discreet and able players" were summoned before the mayor during Lent for the purpose of making a thorough examination of plays, players, and pageants, and "insufficient persons," in whatever requirement—skill, voice, or personal appearance—their defect lay, were mercilessly "avoided." No single player was allowed to undertake more than two parts on pain of a fine of forty shillings.

From the York proclamation of 1415 we learn that the players were expected to be in their places between 3 and 4 a.m., while the prologue of the Coventry plays contains the lines:

> A Sunday next yf that we may
> At six of the belle, we gynne our play
> In N—— towne.

This is interesting, as proving that pageants were sometimes acted in a number of places, somewhat in the style of strolling players. It is known for a fact that the Grey Friars of Coventry had a cycle of Corpus Christi plays; and it has been conjectured that they were forced by the competition of the Trade Gilds to exhibit them outside the town. Whatever may have been the case with the players, it is certain that such plays were not confined to the centres of which we have spoken. We read of a lost Beverley cycle, and of another at Newcastle, of which one play—*The Building of the Ark*—has fortunately been preserved. Like performances took place at Witney, and Preston, at Lancaster, Kendall, and Dublin. The relative perfection of Chester and Coventry, and probably of York, were bound to influence those and other towns, which looked to them as the capitals of the dramatic art. Evidence of the popularity of Miracle Plays in places near and remote is forthcoming in the shape of literary remains or parochial records. Cornwall is famous for its religious drama, to which are due the best monuments of its dead tongue; but other counties were not backward in zealous attachment to the Miracle Play. A few excerpts from Churchwardens' and other accounts may be given by way of showing the extent of the custom:

ASHBURTON, DEVON

1528–9. "ix^{s} ix^{d} for painting cloth for the players and making their tunics, and for 'chequery' for making tunics for the aforesaid players, and for making staves for them, and crests upon their heads for the festival of Corpus Christi."

1533–4. "ij^{d} rewardyd and alowyd to the pleers of Cryssmas game, that pleyd in the said churche."

1537–8. "j^{d} for a pair of silk garments (*seroticarum*) for King Herod on Corpus Christi day."

1542–3. "ij^{s} i^{d} ij devils' heads (*capit. diabol.*) and necessary things in the clothes for the players."

1547–8. "ij^{s} to the players on Corpus Christi day."

(During the reign of Edward VI. the plays were discontinued, to be revived in that of his successor.)

1555–6. "ij^{d} payd for a payr of glouys for hym that played God Almighty at Corpus X^{pi} daye."

"vj^{d} payd for wyne for hym that played Saynt Resinent."

1558–9. "ij^{d} for a payr of glouys to him that played Christ on Corpus X^{pi} daye."

ST. MARTIN'S, LEICESTER

1546–7. "Item p^{d} for makynge of a sworde & payntynge of the same for Harroode viij^{d}."

In the Corporation MSS. of Rye, Sussex, are the following entries:

1474. "Payed to the players of Romeney, the which pleyed in the churche 16^{d}"

1476. "Payed to the pleyers of Winchilse, the whiche pleyed in the churche yerde, vppone the day of the Purification of our Laday 16^{d}"

The performance of the York Miracle Plays went on until 1579. The Newcastle celebration outlasted them by about ten years. The Chester Plays were acted till the end of the sixteenth century, and those of Beverley till 1604. What killed the Miracle Play? This is a deeply interesting speculation, but one with regard to which it is difficult to form a conclusion owing to the co-existence of rival influences, the relative strength of which cannot well be estimated. We have seen that Puritan opinion suspended the Miracle Play at Ashburton during the reign of Edward VI., and it would be natural to look for the same result from the accession of Elizabeth, whereas, at Beverley, it was maintained all through the period of her rule. It is quite possible, however, that all this time efforts were being made by extreme Reformers to bring about its abolition, and that ultimately they were successful. Meanwhile the growth of the secular drama, which was hardly more to the liking of the Puritans, must have proved a powerful counter-attraction, and possibly it is to this rather than religious opposition that the extinction of the Miracle Play was actually due. At any rate, we need feel no surprise that with two such antagonistic forces at work, the ancient and pious custom vanished from the land.

ACADEMIC

CHAPTER VII

ALMS AND LOANS

WE wound up our first part with a draft on parochial records; and we enter on our second part with a further taxation of the same fruitful and unimpeachable source. Those familiar with the life of our ancient universities only in its more modern and luxurious aspects may prepare for revelations of the most startling character, for Oxford and Cambridge were nurtured not only in poverty, but in authorized mendicancy and—a learned phrase may be excused—regulated hypothecation. That clerks in those early days were not ashamed to beg is susceptible of various sorts of proof, one of which consists in the help so frequently afforded them by generous churchwardens. Let us glance at some sixteenth-century books of accounts:

ASHBURTON, DEVON

1568.	"In gyft to too scolers of Oxenford	iiij^{s} iiij^{d} "
1575.	"To a skoler of Oxeford . .	vj^{d} "
1578.	"To a skoler of Oxford . .	iij^{s} iiij^{d} "

TAVISTOCK

1573. "Geven to a skoler of Oxford . . xij^{d} "

WOODBURY, DEVON

1581. "P^{d} to tow skolowers of Oxford . vij^{li} "
1588. "P^{d} to a Scholar that came fro Oxford named Edward Carrow . viij^{d} "
1589. "P^{d} to Richard Crokhey a scholar vj^{d} "

(According to the *Alumni Oxon.* Edward Carrow was elected Student of Christ Church, 1575, from Westminster School; and Richard Crocker, B.A., from Exeter College, 1594.)

PLYMOUTH

1583. "P^{d} to two schollers the xj of June iij^{s} iiij^{d} "
"Geven to a scholler to bringe hym to Oxenford . . . vj^{s} viiij^{d} "

BARNSTAPLE

1583. "Paid as a gift to a scholar at Oxford . . . . . I^{s} "
1603. "Given to a poore scholler by the consent of Mr. Moore, vicar o o 6"

It is worthy of note that the amounts bestowed on this deserving class were in excess of the sums meted out to ordinary "travellers." It is also a fact that, while mention is often made of Oxford scholars, the reverse is the case with Cambridge men. On referring to Willis and Clark's *History of the University of Cambridge* we find that although notices occur of scholars in menial employment,

there is no indication that begging licences were granted them. Still, the following entries prove that occasionally, incipient Cambridge men received public assistance.

SHEFFIELD

1573. "Gave to William Lee, a pore Scholler of Sheffield, towards the settynge him to the universitye of Cambridge and buyinge him bookes and other furnyture . vij$^{s.}$ iiij^{d} "

CAWTHORNE, YORKSHIRE

1663. "Collected in y^{e} parish church of Cawthorne, for Thomas Carr, a poor scholler, who was going to Cambridge, and borne in y^{e} parish of Ecckesfield, the sum of . . *6s. 6d.*"

From the beginning of the reign of James I. there are few entries relating to scholars "of Oxford." Those of other places, however, are named to the time of Charles II., and some of them must have belonged to Oxford, their native place being recorded in lieu of the university.

YOULGREAVE, DERBYSHIRE

1623. "To a poore scholler of Bakewell . 0 1 0"

HEAVITREE, DEVON

1667. "Given towards the maintenance of one Laskey, a poor Scholler for Oxforde . . . . £4"

(This was one Nicholas Laskey, who was a son of Henry Laskey, of Heavitree, and was entered in the books of Wadham College as "filius pauperis." He matriculated May 23, 1667, at the age of seventeen; and was rector of Eggesford in 1674, and of Worthington in 1687.)

These examples are all comparatively late, but we may be certain that the practice to which they bear testimony had existed at a much earlier period, when contributions had been sought, not only from custodians of church funds, but from private persons, to whose charitable instincts or devout inclinations necessitous clerks successfully appealed. Chaucer says of his clerk of Oxenford:

> Yet hadde he but litel gold in cofre:
> But al that he myghte of his frendes hente,
> On bokes and on lerning he it spente,
> And bisily gan for the soules preye
> Of hem that gaf him wher-with to scolaye.

This diligent and conscientious student "loked holwe," and his "courtesy" was threadbare.

In MS. Lansdowne 762 is a poem wherein a husbandman is represented as complaining of the many charges of which he is the subject—taxes to the court, payments to the church, and exactions in the name of charity. Included in the last of these categories is alms to scholars:

> Than cometh clerkys of Oxford and make their mone;
> To her schole-hire they must have money.

It is hardly likely, perhaps, that such "scholar-gypsies" always procured licences, but such were issued, and, when obtained, were doubtless efficacious

in promoting the object which the applicant had in view. The following is a specimen in English dress, the original being in Latin, and dated July 15, 1467:

"To the whole of the sons of Holy Mother Church, to whom the present letter may come, Thomas Chaundler, Professor of Sacred Theology, and Chancellor of the University of Oxford, greeting in the Saviour of all.

"Know the whole of you that we, with full affection, recommend to your worships by reason of his deserts N., a scholar of this University, a peaceable, and honest, and praiseworthy student, strongly beseeching you that when he shall chance to traverse your places, lands, castles, towns, fortresses, lordships, jurisdictions, and passages, ye freely suffer him to cross them without let, trouble, arrest, or injury, with his goods and chattels, or to make halt in his expeditions; and if at any time it shall befall that wrong be done him in person, chattels, or goods, ye deign to remedy the same as may behove in remembrance of the aforesaid University. Further, deign to assist him, when need press, with your charitable favours, receive him whom we recommend, and succour him with the protection of charity, devoutly considering that him who pitieth shall God also pity in meet and acceptable time.

"Given at Oxford, under the Seal of the Office of the Chancellery of the aforesaid University on the fifth day of the month of July in the fourteen hundred and sixtieth year of our Lord."

From the wording of this letter-testimonial it would be a reasonable inference that it was granted to enable the recipient to travel to his home or

some other place, but in certain cases the object may have been to replenish an exhausted purse and aid the distressed scholar to complete his academic course.

"Many," remarks Mr. A. Clark, "were in a condition of extreme poverty, which it is now difficult to recognize or even to imagine. . . . [They] were exempted from University and College dues, and lived from what they received from colleges or individual graduates in payment of the different menial services which they rendered." He gives a list of fifteen Oxford scholars to whom licences were accorded between 1551 and 1572, their duration varying from seven weeks to eight months. In the sixteenth century such passports had become necessary, or, at least, the absence of them, where scholars resorted to begging for a livelihood, was attended with serious risk. By the 4th section of the Act of 22 Henry VIII. c. 12: "Scolers of the Universities of Oxford & Cambrydge that goo about beggyng, not being aucthorysed under the Seale of the sayde Universities," were to be punished as idle rogues, and that punishment was far from light. This section was included in the Act of Elizabeth of 1571–2, but omitted from that of 1596–7.

Scholars were often reduced not only to beg, but to borrow; and as this method of raising money might not always have been easy, even where security was offered, a system of pledging was devised by the authorities for the benefit of impecunious members of the University, both high and low. In all essentials, this department is hardly distinguishable from a pawnbroking establishment conducted under respectable auspices, but

we should go sadly astray if we suffered our views of the institution to be tinged by the associations of a dingy shop in some back street in which hopeless penury plays its last shift. We should rather turn our eyes to the beatific vision of the Mons Pietatis as pictured by Botticelli—a hillock of florins, with the kneeling forms of worthy suppliants and the cloud-borne founder crowned by angelic hands. The poor scholar did not part definitely with his cherished possession; he might hope to recover it in sunnier days, and meanwhile he was enabled to tide himself over an awkward emergency. At the same time the brokers took care to make the transaction a source of profit to the University.

The earliest benefaction for the support of scholars at Oxford consisted in the annual payment of forty shillings by the townsmen in atonement for the execution of certain clerks. In the year 1219 this charge was undertaken by the Abbey of Eynsham, by which the fine was punctually disbursed to the period of its dissolution. A similar but smaller contribution was made by the Abbey of Oseney, but nothing is known as to its origin. Irregularities in the application of these funds induced the Chancellor, Robert Grosseteste, in 1240, to frame an ordinance which resulted in the creation of the "Frideswyde Chest." This treasury was the parent of many others—at the close of the fifteenth century there were as many as twenty-four—and it long remained the typical, as it was the earliest form, of scholastic benefaction, existing side by side with the foundation of colleges, to which it gave an important impetus. The management of these chests was, in all cases, practically identical. The preamble of the ordinance, by which the administra-

tion of the funds was regulated, first stated the name of the donor, and then proceeded to announce the desire of the University to requite his liberality by annual masses and celebrations. The beneficiaries also were enjoined to repeat so many *Pater Nosters* and *Aves* for the repose of his soul.

Next followed particulars of the sums that might be borrowed and those to whom they might be advanced, always on condition that a pledge of equal or greater value was first deposited by the borrower. The term within which the pledge might be redeemed, was specified, as also the time at which an unredeemed pledge was to be sold after due notice had been given by public proclamation. It was usual to appoint as guardians a North and a South countryman, so as to obviate any complaints as to the allocation of the funds, and provision was made for the registration of loans and the audit of the accounts. The last chest to be founded—this was in the latter half of the sixteenth century—placed at the disposal of the University a sum raising the total amount to not less than two thousand marks; and the capital, not merely the interest, was available for the relief of embarrassed scholars. The pledges were valued by the sworn stationer of the University, and that they were expected to exceed in value the amount of the loan is shown by the terms of ordinances, in some of which the guardians are required to submit to the auditors an account of the capital and increase. In spite of precaution, however, cases of peculation were not unknown, for, on more than one occasion, guardians were accused of embezzlement, and there are statutes complaining of the "marvellous disappearance" of funds, the property of the University, and safeguarding their future administration.

The chests were divided into two categories—the "Summer" and the "Winter." This distinction seems to have been due to the date of the election of the guardians. In this matter, however, there was considerable variation, and in later ages the stipulations of the ordinances, in which the bequests were embodied, ceased to be observed. Another circumstance which deserves notice is that in the reforms instituted in the time of Archbishop Laud nearly all traces of this benevolent system were obliterated, and the names of founders—John Pontysera, Bishop of Winchester, Gilbert Routhbury, Philip Turville, John Langton, W. de Seltone, Dame Joan Danvers, etc.—consigned to the shades of academic oblivion. During the period when the funds were employed in conformity with the testator's design, the authorities, in their wisdom, ignored limitations of age, birth, and neighbourhood, and thus any member of the University, sophist or questionist, bachelor or master, was entitled to a share of the benefit. This wide charity cannot have met with unanimous approval. Large as the fund was, it would hardly have sufficed for the needs of every ill-clothed and ill-fed scholar; and, in the distribution of the money, it would be only in accord with common experience of human nature, if an enterprising official, whose eagerness had outstripped his resources, should be preferred to some pinched, obscure stripling, and receive a wholly disproportionate share of the eleemosynary grant.

As an illustration of what sometimes occurred, we may take the case of Master Henry Sever, Warden of Merton Hall. He had carried out certain repairs of the buildings, and, in order to discharge the bill, had borrowed from Seltone chest the maximum

amount permitted by the ordinance—sixty shillings. To obtain this advance, he had pledged an illuminated missal of considerably greater value, and now he had come prepared to redeem it. He finds that the missal had been lent to some client for the purpose of inspection, a silver cup, estimated by the stationer to be worth even more, being deposited in its stead. This is not precisely what Master Sever had wanted. However, he takes the cup, assured that he will presently be able to negotiate an exchange with the person in possession of his missal.

This serves as a reminder that, if money was scarce, books—the mainspring of intellectual activity—were yet scarcer; and it is of the utmost interest to inquire how this famine of the arts was mitigated. Oral lectures were the rule, but books could not be entirely dispensed with; and even Wardens might not always be in a position to procure all the works of which they stood in need. The obvious remedy was a library or libraries; and such collections—they arrived in good time, chiefly through the bequests of virtuosi—constituted an invaluable resource to that vast horde of scholars whose scanty means would not allow them to purchase books. As the result of Mr. Blakiston's research, the famous library with which Richard Aungerville is said to have endowed Durham College, and, according to Adam de Murimuth, filled five carts, turns out to be a myth or rather a pious intention. The good Bishop died deep in debt, and the books, if preserved as a collection, went, it is now certain, elsewhere. Thirty-five years later, however, another bishop, Thomas Cobham, of Worcester, who died in 1327, bequeathed to the University a mass of books, and the statute referring to them provides that they shall be chained in convenient

order in the "soler" over the old Congregation House, where all the property of the University was stored. The books were to be in the custody of a chaplain, who was to pray for the soul of the donor.

Another statute relates to a "chest of four keys," from which it appears that books were kept in coffers and lent upon indenture or security, exactly as was done in the case of money. It was also a by no means infrequent occurrence for persons to give or bequeath books on condition that they were chained in the chancel of the church for the use of scholars and periodically inspected by the chancellor and proctors. By far the greatest benefactor of the University in the matter of books was Humphrey, Duke of Gloucester, who made many valuable presents during his lifetime, and on his death, in 1447, a final large instalment was added to the store. Of these only one remains in the Bodleian Library, but in contemporary letters there are many notes expressing gratitude for, and appreciation of, this splendid munificence, which advanced the cause of learning more perhaps than any other donation recorded in the annals of the University.

The well-being of the librarian was, very properly, a subject of concern. By an ordinance of 1412 his stipend was raised, and he became recognized as one of the chief officers of the University. Lest "hope deferred" should produce slackness in the performance of his duties, the proctors were bound to pay his salary regularly, and, as a further encouragement, every beneficed graduate, on his inception, was required to make him a present of clothes. A similar custom prevailed with regard to the bedels, and it is sententiously remarked that

it would be absurd for one adorned with superior dignity to be endued with inferior privileges.

The ordinance of 1412 brought about other changes. At the outset the library was accessible to all scholars at stated times; permission was now confined to graduates or religious, and, in the case of the latter, to those who were of eight years' standing *in philosophia.* Thus a monk named Hardwyke, who did not possess this qualification, had to sue for a "grace," and even then the privilege was limited to one term. The reasons for these restrictions probably were that the undergraduate constituency in those days was composed, in a great degree, of careless and dirty boys, who would be apt to soil the manuscripts, while the monks had their own libraries, to which they could resort without encroaching on the slender resources of masters and bachelors. All graduates on admission were required to take a solemn oath that they would handle the books *modo honesto et pacifico, nulli librorum per turpitudinem aut rasuras abolitionesque foliorum, præjudicium inferendo.*

The librarian was granted a month's vacation, and the library was closed on Sundays and holy-days, unless it should chance that a distinguished stranger desired to visit it, when leave was given him from sunrise to sunset, subject to the condition that he was not followed by a loud rabble. At all other times, the hours during which the library was open were from nine to eleven o'clock a.m., and from one to four o'clock p.m. Suspended on the wall was a large board inscribed with the names both of the books and the donors "lest oblivion, the step-mother of memory, should pluck from our breasts the remembrance of our benefactors." To the same intent thrice every quarter a solemn mass of the Holy

Ghost, and once every quarter a requiem mass, were said at the altar of St. Katherine in the Church of the Blessed Virgin. Every night the books and the windows of the library were closed, and, with certain rare exceptions, books were not permitted to be removed.

ACADEMIC

CHAPTER VIII

OF THE PRIVILEGE

WHILE money and books were the twin bases on which the fabric of the University reposed, it is plain that a great institution of the sort would involve the employment of numerous agencies not strictly concerned with the work of instruction, but engaged upon the not less necessary functions of maintaining order and ministering to the needs of the body. All persons so occupied were accounted as "of the privilege of the University," and were subject to the jurisdiction of the Chancellor. From an indenture between the University of Oxford and the Town, dated 1459, we find that the Privilege embraced:

"The Chaunceller, alle doctours, maistres, other graduats, alle studients, alle scholers, and alle clerkes, dwellyng within the precint of the Universite, of what condicion, ordre or degree soever they be, every dailly continuell servant to eny of theym bifore rehersed belonging, the styward of the Universite wyth their menyall men, also alle Bedells with their dailly servants and their householdes, all catours, manciples, spencers, cokes, lavenders, povere children of scolers or clerkes, within the precinct of the said Universite, also alle other servants taking clothing or

hyre by the yere, half yere, or quarter of the yere takyng atte leste for the yere vi. shillings and viij. pence, for the half iii. shillings and iv. pence, and the quarter xx. pence of any doctour, maister, graduat, scoler or clerk without fraud or malengyne; also, alle common caryers, bryngers of scolers to the Universite, or their money, letters, or eny especiall message to eny scoler or clerk, or fetcher of eny scoler or clerk fro the Universite for the tyme of such fetchyng or bryngyng or abidyng in the Universite to that entent."

Parchment-makers, illuminators, scribes, barbers, and tailors were also, by convention, members of the Privilege.

Before going farther, it will be well to inquire what is intended by the "precinct of the University." There appears to have been some amount of uncertainty as to the radius included. In 1444 Henry VI. granted authority to the Chancellor to banish any contumacious person from the precinct of the University, which was taken to mean a circuit of twelve miles. On the other hand, on March 17, 1458, David Ap-Thomas swore on the Holy Gospels that he would keep the peace towards the members of the University, would inform the authorities of any plot against them which might come to his knowledge, would not assist in rescuing Richard Lude from prison, and would leave Oxford on the following day, nor presume to come within *ten* miles of the University for twelve weeks.

THE BEDELS

Of all the persons named as of the Privilege the bedels, as the executive officers, most distinctly

represent its character and extent. The office of bedel was, of course, not confined to the Universities. In London, for example, the wards had their bedels, who were sworn, *inter alia*, to suffer no persons of ill repute to dwell in the ward of which they were bedels, and to return good men upon inquests. They were also to have a good horn and loud sounding. At Oxford the bedels were bound to make summonses for scholars at their request, and to arrest wrong-doers. The latter duty was naturally attended with some peril; and in 1457, one Richard of the Castle, flying from the hands of Came, Bedel, with drawn dagger, because he refused to go to prison, was banished from the University. Fines also were levied by the bedels, and they played a conspicuous part in the ceremonies of Congregation and similar assemblies. As the position was liable to abuse, they were bound by certain restrictions. Thus, they were forbidden to ask or receive [extraordinary?] fees from inceptors[1] and to carry anything away with them from the feasts at inceptions. They were required to attend funerals, but might not ask for a share of the offerings, nor for any present from the executors of the dead. And they had to give up their maces at the first congregation after Michaelmas, but were eligible for re-appointment.

The bedels were of two grades—higher and lower; and the superior bedels were bound by immemorial usage to provide the inferior bedels with board and lodging and ten shillings a year for shoes. In 1337 the latter, on resigning their office in congregation, according to custom, complained that the superior

[1] This was a counsel of perfection. The bedels certainly received fees (see below).

bedels had neglected to furnish them with board. Thereupon the University decreed that the inferior bedels should be granted the option of standing at meals with the superior or receiving a weekly allowance of seven pence as compensation. This allowance was to be suspended during the absence from Oxford of any inferior bedel, whether occasioned by his own affairs or those of the University. The annual payment of ten shillings for shoes was confirmed. Failure to observe these regulations subjected superior bedels to the loss of their office when the time came for the maces to be resumed.

The question will naturally arise—From what source, or sources, did the superior bedels obtain the means not only to provide for their necessities, but also to feed, house, and, to some extent, clothe their hungry and dissatisfied dependents? Light is thrown upon this subject in a way which shows that the superior bedels themselves may not have been without a grievance. At any rate, about seventy years later—in 1411—an ordinance draws attention to omissions on the part of the students, evidently inconvenient at the time, in the following words:

"The charity of students has in these latter days grown cold, so that they no longer make collections for the Doctors and Masters of their several faculties, nor *make due presents to the Bedels*; therefore it is decreed that henceforth all scholars, on receiving notices from a Doctor, Master, or Bedel of their respective faculties shall pay regular contributions according to the ancient statutes on pain of losing the current year of their academical course, and of forfeiting their privilege; and all principals of halls, at the notice of the Doctors, Masters or Bedels, shall within a month from the commencement of

such collection, take care that the members of their societies contribute, and send in the names of those who fail to do so to the Chancellor under a penalty of twenty shillings: and every Doctor or Master shall pay the Bedel honestly within a month from the commencement of the collection."

From a notice of the year 1432 it transpires that the bedels received one-twelfth of all fines inflicted for misdemeanours; and, in 1434, prior to the admission of inceptors, the Chancellor announced that each inceptor would be required to pay the ordinary fee of thirty shillings and a pair of buckskin gloves for each bedel, or, in lieu of gloves, five shillings to be divided among the bedels. Two licentiates protested against such payment, stating that it was contrary to the statutes, whereupon an inquiry was held, by which it was established that these fees had been paid to the bedels from time immemorial and were therefore due.

The appointment of the bedels rested with the Regent Masters, and was one of their most jealously guarded prerogatives. Mention has been made of John Came, who for many years held the office of bedel. When he was elected, in 1433, by four Regent Masters and the two Proctors in congregation, an attempt was made by the Chancellor and the Doctors of the four faculties to substitute a nominee of their own, one Benedict Stokes, on the ground that they were the senior members of the University, and represented a majority of their faculties. Realizing that the supremacy of the faculty of Arts was menaced, the Proctors resisted this claim and demanded the admission of Came, with the result that the Chancellor reluctantly gave way. An appeal was entered by Richard Cauntone,

a doctor of laws, and the candidate, Benedict Stokes, but three days later was renounced by both of them as frivolous, and their cautions were forfeited. Even then the matter did not end. Two days afterwards, information came to the Proctors that one of the doctors had given his scholars to understand that the election would have been invalid but for a vote recorded by a doctor. Thereupon the Proctors, in order to settle the question once for all, summoned a congregation, by which it was determined that the phrase "major part" imported a numerical majority.

The election of bedels was conducted in the same way as that of the Chancellor. Every such election was preceded by three proclamations made within eight "legible" days after the office had become vacant.

The relations between the University and the Town will be dealt with presently. Here it may be noticed that the bedels exercised some control over the proceedings of the townsmen which concerned the interests of students. As an illustration, when the goods and chattels of Harry Keys, a scholar, which had been left in the house of Thomas Manciple, were "presyd" betwixt Thomas Smyth and Davy Dyker, the valuers were sworn before John Wykam, Bedel.

If the bedels, as public officials, were necessarily and conspicuously of the Privilege, the remark is not less true of those humbler functionaries, the personal attendants of the scholars. As we have seen, the payment of the bedels depended in part on collections, and the gains of the scholars' servants were derived from the same source. Every master was compelled by statute to exact contributions from his scholars at the end of term at what was called

"collection." At the present time the expression is applied to terminal examinations, and this use of it originated from the circumstance that fees were paid by the scholars varying in accordance with the subject of study. For grammar the statutable amount was eightpence, for natural philosophy fourpence, and for logic threepence per term, and it was usual to reckon four terms to the year. To each scholar were allotted two servants—a superior and an inferior; the former receiving threepence, and the latter one penny per term. There was no evading these charges; even the poorest student had to pay "scot and lot" towards the support of both classes of menials, some of whom were doubtless better off than himself. The division of these servants into orders, resembling those of the bedels, has descended to modern days, most Oxford colleges having their upper and under "scouts." This, it has been well observed, "is a curious instance of the vitality of insignificant customs, which exist while the greater give place to new."

At the commencement of the chapter, a list was furnished of various occupations—more or less connected with the work of the University—the professors of which were regarded as of the Privilege. The term "privilege," in this and similar contexts, denotes administrative autonomy and special jurisdiction; and members of these trades were amenable to the Chancellor, while the Chancellor had to answer for their good behaviour to the King and Parliament. In the Middle Ages the Chancellor was not, as he is to-day, a permanent and ornamental figure-head, the duties properly pertaining to the office being discharged by the Vice-Chancellor. He was the active and dominant centre of University

life, and, as such, took cognisance of numerous details which would now be deemed too petty, and even ridiculous, for a personage of his dignity and importance. So great, however, was the pressure of judicial and other business that it was necessary that he should be relieved of part of the burden, and thus we often find commissaries sitting in his room and stead.

The Ministry of Trade

The powers of the Chancellor were very considerable. They did not extend to questions of life or death, but he could fine, he could imprison, he could banish, and, being an ecclesiastic, he could excommunicate; and these methods of reproof and coercion were constantly employed by him as *ex-officio* justice of the peace and censor of public morals. The privilege of the University was of a dual nature. It protected the scholars in any court of first instance but a University court; on the other hand, the University obtained full control over its scholars, who were forbidden to enter a secular court. Litigants were allowed to appeal, and very frequently did appeal, from the Chancellor's decision to Congregation, and, if they were still not satisfied and the matter was sufficiently grave, to the Pope—that is, in spiritual causes. In temporal causes an appeal lay to the higher tribunals of the realm and the King. The Chancellor, also, might appeal to the King, invoking the secular arm in cases where the voice of the Church proved ineffectual in dealing with rebellious subjects, and the letter addressed to the sovereign for this purpose was called, in technical language, a *significavit*.

Sometimes the King, moved perhaps by a petition from his lieges in one or other of the University towns, admonished the Chancellor to be more alert in the performance of his duty. In June 1444 the head of the University of Oxford was in receipt of the following missive from Henry VI.:

"Trusty and welbeloved, we grete you wel, and late you wyte that we have understanden by credible report of the greet riotts and misgovernance that have at diverse tymys ensued and contynelly ensue by two circuits used in oure Universite of Oxon in the vigile of St. John Baptist and the Holy Apposteles Peter and Paule to the gret hurt and disturbance of the sad and wol vituled personnes of the same Universite, wherefore We, wolling such vices and misgovernaunce to be suppressyd and refused in the said Universite and desiring the ease and tranquillite of the said peuple in the same, wol and charge you straitly that ye see and ordeyne by youre discretione that al such vices and misgovernaunce be left and all such as may be founde defective in that behalve be sharply punished in example of all other; and more over We charge you oure Chancellor, to whom the governance and keping of our paix within oure said Universite by virtu of our privilege roial is committed that in eschewing of all inconvenience, ye see and ordeyne that oure paix be surely kepe within oure Universite above said, as wel in the saide vigiles as at all other tymes; and for asmuch as We be enformed that the sermons in latin which ever before this tyme, save now of late, be now gretly discontynued, to the gret hurt and disworship of the same, We therefore, desiring right affecturusely the increse of vertu and cunning in oure said Universite, wol and commande you straitly that ye with ripe and suffisant

maturite, advise a sure remede in that party, by the which such sermons may thereafter be continued and invioiably observed, wherin ye shal do unto Us right singulier pleisir.—Geven under oure signet at Farneham the 20 day of Juyn."

The reader will no doubt be interested to learn the occasion of this reprimand. The concluding portion invests it with a somewhat general character, and may be interpreted as pointing to a lamentable decline from a previous high standard of piety and learning, which only incessant preaching was calculated to rectify. Neglecting this postscript, it is pretty evident that the scandal arising from the observance of vigils was produced by the inconsiderate carousals of craftsmen included in the Privilege, and was therefore obnoxious to the magisterial notice of the Chancellor. It will be sufficient to refer to the riots on the Eve of St. John Baptist.

As was the custom in mediæval towns, different trades had different stations assigned to them, and the tailors, who must have driven a flourishing business in caps and gowns, had their shops in the north-west ward of St. Michael's Parish. In ancient days these satellites indulged at certain seasons—more particularly on the Eve of St. John Baptist—in unseemly demonstrations. They waxed very jovial, and, after eating, drinking and carousing, "took a circuit" through the streets of the city, accompanied by sundry musicians, and "using certain sonnets" in praise of their profession and patron. As long as they kept within these limits, there seems to have been no complaint, but the thing increased more and more. People were disturbed and alarmed, the watch beaten, and from blows the outrageous tailors passed to murder. And so it came about that their

revelling, with the "circuit" of another profession on the Eve of St. Peter and St. Paul, was prohibited first by Edward III. and then by Henry VI. in the letter above cited.

Another trade closely associated with the University was that of the barbers. In the twenty-second year of Edward III. (1348) the whole company and fellowship of the barbers within the precincts of Oxford appeared before the Chancellor and announced their intention of "joining and binding themselves together in amity and love." They brought with them certain ordinances and statutes drawn up in writing for the weal of the craft of barbers, and requested the Chancellor to peruse and correct them, and, afterwards, if he approved, attach to them the seal of the University. The regulations having been seriously considered by the Chancellor, the two proctors and certain doctors, it was resolved to comply with the petition on the day following and constitute the barbers a society or corporation.

The first article stipulated that the said craft should, under certain penalties, keep and maintain a light before the image of our Lady in our Lady's Chapel, within the precincts of St. Frideswyde's Church; the second, that no person of the said craft should work on a Sunday, save on market Sundays and in harvest-time, or shave any but such as were to preach or do a religious act on Sunday all through the year; while a third provided that all such as were of the craft were to receive at least sixpence a quarter from each customer who desired to be shaved weekly in his chamber or house. One shave per week does not coincide with our modern notions of what is attractive and presentable in the outer man, but the same rule prevailed at

Cambridge. The statutes of St. John's College in the latter university affirmed: "A barber is very necessary to the college, who shall shave and cut once a week the head and beard of the Master, Fellows, and Scholars, as they shall severally have need."

In the statutes of New College, Oxford, there is an injunction against the mock ceremony of shaving on the night preceding magistration. It is called a *ludus* (or play), and is believed to have been affined to the ecclesiastical mummeries so popular in the Middle Ages, in one of which the characters were a bishop, an abbot, and a precentor, and a fool shaved the precentor on a public stage erected at the west end of the church. There was also a species of masquerade celebrated by the religious in France, which consisted in the display of the most formidable beards; and it is recorded by Gregory of Tours that the Abbess of Poitou was accused of allowing one of these shows, called a *Barbitoria*, to be held in her monastery.

The only men of religion permitted to wear long beards were the Templars; and, speaking generally,[1] the presence or absence of hair was one of the marks of cleavage between the clergy (*tonsi*) and the laity (*criniti*). Even those privileged to wear long hair—we refer, of course, to the male portion of the community—were required to be shorn so far that part of their ears might appear, and that their eyes might not be covered. At first it may seem strange that the question of trimming the hair should come under the cognizance

[1] It is, nevertheless, a fact that high dignitaries of the Church—*e.g.* Cardinal Pole—are represented with beards; and St. Benedict himself is depicted with this virile appendage!

of the Church—the person himself or his barber might have been deemed at liberty to consult his own taste. The canon, however, which regulated the usage, was based on the apostolic challenge: "Doth not nature itself teach you that, if a man hath long hair, it is a shame unto him?"

This ordinance applied *a fortiori* to priests, who had to be content with very little hair. At a visitation of Oriel College by Longland, Bishop of London, in 1531, he ordered one of the Fellows, who was a priest, to abstain, under pain of expulsion, from wearing a beard and pinked shoes, like a laic. It would seem that this spiritual person had been accustomed to ridicule the Governor and Fellows of the college, since he was commanded to abjure that bad habit also.

The correct explanation of the custom condemned by the New College statutes is doubtless that already furnished. Hearne, however, had an idea that it was a reflexion on the Lollards. Wiclif is always represented with a beard, and, as most of his followers were lay-folk, it was possibly a symbol of the sect, which may have recollected the text: "Neither shalt thou mar the corners of thy beard."

The interest of the University in expert tonsure is now well understood, but the craving for the subjugation of falsifying hair must have been quite secondary to that for the sustenance of the bodily powers, and accordingly the cooks stood very near to the purveyors of intellectual aliment. Nor did the Chancellor concern himself merely with the ratification of their ordinances; as the natural sequence, he, or his deputy, saw to it that they were properly respected, and formed a court of appeal for the settlement of internecine differences. Thus, on

August 19, 1463, two persons, proctors of the craft of cooks of the University of Oxford, petitioned the Commissary against one of the members who had declined to contribute to the finding of candles vulgarly called "Coke-Lyght" in the church of St. Mary-the-Virgin, and to a certain accustomed feast on the day of the Cooks' Riding in the month of May. A day was appointed for investigating the matter, when the defendant did not appear, but several witnesses were produced to confirm the plaintiffs' assertions. Robert, the cook of Hampton Hall, deposed that all the cooks of Colleges and Halls had been used to contribute to the annual feast; that he had been a cook for six years, and that the cooks had always nominated two of their number to gather contributions. His testimony was corroborated by Stephen, the cook of Vine Hall, as also by Walter, another cook, and John, the cook of "Brasenos." It is worthy of note that in the record of these proceedings the names are entered as "Stephanus Coke," "Walterus Coke," and "Johannes Coke," thus throwing light on the formation of one of our commonest surnames.

Not only were questions of public policy and "constitutional usage" determined by the Chancellor's court, but delinquents of all descriptions were brought up for judgment. Here we shall do well to remember that this was an ecclesiastical court, and therefore offences against good morals as well as the law of the land were dealt with. A person unjustly defamed as guilty of incontinence could clear himself by a voluntary process of compurgation—that is, by the sworn testimony of reputable friends. If, unhappily, he was guilty, he might rehabilitate himself by formally abjuring his indiscretions. Both scholars

and others of the Privilege frequently appeared before the Chancellor in the character of penitents. In 1443 a certain Christina, laundress of St. Martin's parish, swore that she would no longer exercise her trade for any scholar or scholars of the University, because under colour of it many evils had been perpetrated, wherefore she was imprisoned and freely abjured the aforesaid evils in the presence of Master Thomas Gascoigne, S.T.P., the Chancellor. In 1444 Dominus Hugo Sadler, priest, swore on the Holy Gospels that he would not disturb the peace of the University, and would abstain from pandering and fornication, on pain of paying five marks on conviction. In this case four acted as sureties, singly and jointly. In 1452 Robert Smyth, alias Harpmaker, suspected of adultery with Joan Fitz-John, tapestry-maker, dwelling in the corner house on the east side of Cat-strete, abjured the society of the same Joan, and swore that he would not come into any place where she was, whether in the public street, market, church or chapel, on pain of paying forty shillings to the University. On August 22, 1450, Thomas Blake, *peliparius*, William Whyte, barber, John Karyn, *chirothecarius*, "husbundemen" (householders), presented themselves before the Chancellor, and, touching the Holy Gospels, abjured the game of tennis within Oxford and its precinct.

At this point it will be convenient to refer to a custom not by any means confined to the Universities, about which there appears to be some degree of misconception. "Love-days," as they are called, have been strangely confused with *law*-days, whereas the very essence of the institution was the avoidance of litigation with all its expense and ill-feeling. The practice of submitting disputes to friendly arbitration

was seemingly founded on the text: "Dare any of you, having a matter against another go to law before the unbelievers and not before the saints?" In these circumstances it is not surprising that the clergy bore a great part in such proceedings; and thus we find Chaucer avouching of his Frere:

> In love-dayes ther coude he mochel helpe,
> For ther he was nat lyk a cloisterer,
> With a thredbare cope, as is a poore scoler,
> But he was lyk a maister or a pope.

The University, being a microcosm of the entire kingdom, an *imperium in imperio*, by virtue of the "privilege roiall," cases occur in which deplorable misunderstandings were referred to the decision of one or more graduates of position—either in the first instance, or, it might be, ultimately, to the Chancellor or Commissary—by persons subject to academic tutelage. When the affair had been adjudicated, forms of reconciliation were prescribed, the parties being required to shake hands, go on their knees to one another, give each other the "kiss of peace," and provide a feast at their mutual expense, the *menu* of which was sometimes determined by the arbiter.

This interesting and admirable feature of old English life receives such copious illustration from the annals of Oxford that it seems worth while to specify examples. Thus, on November 8, 1445, a dispute between John Godsond, stationer, and John Coneley, "lymner," having been referred to two Masters of Arts and they having failed to compose it within the time stipulated, the Chancellor intervened and decided that John Coneley should work for John Godsond for one year only; that his wages should be four marks, ten shillings; that he should himself

fetch his work and return it to his employer's abode; that he should be thrifty in the use of his colours; and that his employer should have free ingress to the place where he sat at work. On July 7, 1446, four arbitrators, having in hand a quarrel between Broadgates and Pauline Halls, imposed the following conditions: That the Principals should implore reconciliation from each other for themselves and their parties; that they should give, either to other, the kiss of peace, and swear upon the Holy Gospels to have brotherly love toward each other for the future, and bind themselves to its observance under a bond to pay one hundred shillings for the violation thereof. The bond was to be in the keeping of the Chancellor, and he was to deliver it, should hostilities be renewed, into the hands of the aggrieved party. David Philip, alleged to have struck John Olney, was commanded to kneel to him, and ask and receive his pardon. It is worthy of remark that the invariable phrase applied to past quarrels is "ab origine mundi," which left no loop-hole for the revival of ancestral feuds, however remote in point of time.

On July 21, 1452, Master Robert Mason, having delivered judgment in the case of Thomas Condale, a servant of New College, and John Condale, a servant of New College, and John Morys, tailor, required both parties, as a pledge of goodwill, to invite their neighbours to an entertainment, and provide at their joint charges two gallons of good ale.

On January 10, 1465, Thomas Chaundler, S.T.P., Commissary-General of the University of Oxford, having been chosen as arbitrator between the worshipful Sir Thomas Lancester, Canon-regular and prior of the same order of students, and Simon Marshall, on

the one part, and John Merton, pedagogue, and his wife, on the other, decreed that none of them should abuse, threaten, or make faces at each other, and that they should forgive all past offences. None of them was to institute further proceedings judicial or extra-judicial, and within fifteen days of the date thereof they were to furnish an entertainment at their joint charges—one party to furnish a goose with a measure of wine, and the other bread and beer.

Finally, on February 6, 1465, Dr. John Caldbeke, arbiter between certain members of "White Hall" and "Deep Hall," ordered the parties to pardon each other and commence no ulterior proceedings. He imposed perpetual silence on them, and as to a certain desk, the *causa teterrima belli*, reserved the decision to the Chancellor. The disputants, accompanied by four members of each hall, were to meet at a time and place to be named, wine was to be provided for their mutual entertainment, and, before parting, they were to shake hands.

The University has been described as a microcosm of the realm, and it is evident that the King could confer upon it no privilege superior to those which he himself enjoyed. The subject of sanctuary, in its larger aspects, will be treated in a later section. Here it is instanced only as a limitation of the power of the University, as an interference with its privilege. On August 25, 1463, a tailor, who had wounded another man with a knife, fled for sanctuary to Broadgates Hall. He was pursued by one of the proctors, who dragged him forth, regardless of his protests, and placed him in custody. He promised, however, to restore him to sanctuary, should his life be in danger. It was proved before

the Commissary that the wound was not serious, whereupon another tailor was allowed to give security for the payment of the regular fine, and the accused was ordered to appear and answer to the charge of one Croftone. Eventually, on his declaration that he believed his life to be in peril, he was restored by the proctor to sanctuary. It should be added that Broadgates Hall belonged to the "right and property" of the Hospital of St. John the Baptist, outside the East Gate of the City of Oxford; hence it possessed the right of protecting any one who sought immunity within its walls.

The question has been deferred too long—Against whom did the University maintain its privilege? In part, no doubt, against the King's officers, but, mainly, against the Mayor and Burgesses of Oxford, between whom and the scholars there was a simmering hostility bursting into periodical *mêlées* answering to, but infinitely more sanguinary than, the "town and gown rows" of more recent days. The general result of these disturbances, assumed to be acts of aggression on the part of the citizens, but more probably provoked by the insolence of the undergraduate portion of the University, of which there is abundant evidence, was to fortify the authority of the Chancellor and extend his powers. We have seen that the townsmen, at an early period, were mulcted in an annual tribute, of which they were afterwards relieved, for hanging certain clerks. This might have served as a sufficient warning of the inviolability of the erudite persons in their midst, but it failed of effect. Altogether there were three capital riots in the later Middle Ages, which we shall proceed to notice, together with the consequences.

Of these three great conflicts between townsmen and scholars the first occurred in 1214. This was ended by a compromise brought about by the Bishop of Tusculum, the Papal Legate, the King granting jurisdiction to the University in all cases where one of the parties was a scholar or a scholar's servant. The second tumult, which took place in 1290, induced the King to confer upon the University the custody of the peace, the custody of the assize of victuals, and the supervision of weights and measures jointly with the Mayor, who had hitherto borne full sway in matters of police. The third battle was in 1357. This was the famous riot of St. Scholastica's day—*satis periculosa*—which resulted in the excommunication of the Mayor, while he and the commonalty of the town of Oxford were laid under an interdict by John, Bishop of Lincoln. The Mayor, who was a vintner and drawn into the quarrel through it having arisen in his tavern, is stated in one account to have been originally in the service of the University—protected by the Privilege—and this, of course, was regarded as an aggravation of his offence. The end of it was that the rights before mentioned were confirmed with certain extensions—namely, the supervision of the pavement, and the custody of the peace as well between laics as scholars, while the Mayor was excluded from the custody of the peace between scholars.

As a species of penance the Mayor and his fellows were enjoined by the Bishop of Lincoln to attend an anniversary mass at St. Mary's on St. Scholastica's Day; and the scholars were forbidden, on pain of a long term of imprisonment, to inflict on any layman of the town, whilst on his

way to the church, during the celebration of the mass, or in the course of his return, any injury or violence, lest he should be deterred from the observance of the duty. This caution was proclaimed through the schools year by year on the "legible day" immediately preceding the festival. Good relations were hard to restore, and, as long after as 1432, the authorities were reduced to publishing the following edict in the hope of abating the scandal:

"Whereas there are no more suitable means of allaying the lamentable dissensions between the University and the Town, which are a sign of the wrath of the Almighty, than the devout supplications of priests walking in procession, therefore this ordinance is made for the regulation of such processions. First shall walk the Chancellor, after him the Doctors by two and two, in the rank of their several faculties, then Masters of Arts, then Bachelors in Theology, then Non-Regents, then beneficed Bachelors, then all other Bachelors, then secular priests non-graduates, then scholars, all by two and two, and all silently praying for the King and other benefactors living and dead, and for the peace and prosperity of the University. Priests non-graduates shall be bound to attend on pain of a fine of sixpence, but no licentiates of any faculty soever may in any wise be present at the act."

It would not be fair to conclude this account without giving the townsmen's version of the way in which the Privilege was exercised. This can be conveniently presented in the terms of two petitions, one of which certainly, and the other probably, dates from the second year of Edward III (1328). If there be

any truth in the allegations, it must be owned that the Chancellor abused his judicial position to a degree quite intolerable to the victims.

"To the King and Council; the Burgesses of Oxford complain, whereas the Chancellor and University of Oxford have cognizance of contracts, covenants, and trespass between clerk and clerk, or clerk and lay, they encroach on the franchise of the town, and draw to them these contracts, etc., between laymen, especially in certain gifts and actions brought before the Chancellor, wherein a clerk has some concern, who, by covine, are made to incur large sums which were not due, and thus the defendants are condemned and afterwards excommunicated in all the churches of the town, unless they agree thereto; and if they are not absolved of the sentence before the Chancellor, they are despoiled even to their breeches, and must give all their goods to the clerk. In the same way a plea of trespass in which there has been a cession to a clerk is made to terminate in a plea of debt, and thus charges of rent upon free tenements are proved, against law and in great burden to the tenements of the town. Thus the Chancellor encroaches on the franchises of the town, to the damage of the King's profits on writs and issues on pleas of debts, &c., pleadable before the Justices, or before the Mayor and bailiffs of the town. And with such proceedings taken before the Chancellor concerning merchants and other strangers passing through, as well as residents, the merchants will not repair thither on account of such evil doings, and the town is thereby greatly impoverished."

II

"To the King and Council: Walter de Harewell, burgess and inheritor in Oxford, showing that whereas the Chancellor of the University has cognizance of offences and contracts between clerk and clerk, and clerk and lay, in the town, but nowhere else, one William de Wyneye, clerk, impleaded him before the Chancellor for offences done out of his jurisdiction in a foreign county; the said Walter justified himself before the Chancellor, but the said Chancellor, notwithstanding, condemned him to prison and kept him in prison in Oxford till he contented the said William with a large sum of money, and made an obligation of £20 to be at the will of the said University, and still he had to find mainprise before he could be set free. And because when he was taken and led to prison by the bedels of the University, he entered his house and shut his coffers and chests and the door of his room for the safety of his goods and chattels, the said Chancellor banished him out of the town, and had it proclaimed everywhere, as though he were an outlaw, and sequestered all his goods and chattels, threatening if he entered the town to imprison him again for six days. No one ever had such franchise or power thus to outlaw, destroy, and banish the King's burgesses in the said town. Prays a remedy for charity."[1]

[1] These petitions are taken from a large and valuable collection translated by Miss Lucy Toulmin Smith and contributed to the *Collectanea* (Third Series) of the Oxford Historical Society. They are copied substantially as she gives them; but curiously enough the accomplished lady stumbles over the word "brais," for which she proposes "arms" as the translation, evidently thinking of *bras* and quite forgetting that *braïes* is the French for "breeches."

Owing perhaps to their peculiar position as the King's chattels, neither the chartered rights of the citizens nor the Privilege of the University could be directly asserted against the Jews, of whom a considerable body appears to have been settled at Oxford, but the unbelievers were not allowed to do as they pleased. A critical instance occurred at Ascensiontide, 1268, in connexion with a solemn procession to St. Frideswyde's, when certain horrible Jews, *demoniaco spiritu arrepti*, seized a cross from the bearer, broke it, and trampled it under foot. Complaint was made to the King, who happened to be at Woodstock, and he issued an order for the making of two crosses at the expense of the Jews, one of which was to be of silver gilt and portable, and the other of marble and stationary. These were to be preserved for the perpetual remembrance of the outrage; and the silver cross was presented to the Chancellor, masters, and scholars, to be borne before them in their solemn processions. An ordinance states that "since the relics of the Blessed Frideswyde repose in the borough of Oxford, and more especially ought to be deservedly honoured as well by the University as by others, particularly by all who dwell in the aforesaid town, that the said University may obtain, through the intervenient merits and prayers of the same, more abundant tranquillity and peace for the future, a solemn procession be made in the middle, to wit, Lent term, to the church of the same virgin, for the peace and tranquillity of the University, and that solemn mass be held there in respect of the above-said virgin."

ACADEMIC

CHAPTER IX

THE "STUDIUM GENERALE"

WE have expounded with some particularity the conditions of University life; we have now to deal with University life in its more intimate relations. And first we must say something of the title, the Latinity of which is not above suspicion, though its convenience and expressiveness are beyond question. The term *studium generale* was applied, in mediæval times, to an academy in which instruction was imparted on all subjects, and which was thus differentiated from grammar schools and schools of divinity, in the former of which the curriculum was restricted to Latin, and in the latter to theology. The phrase connoted also a place of common resort, as distinct from mere local foundations, the advantages of which were confined to the immediate neighbourhood. According to Mr. Froude, no fewer than thirty thousand students "gathered out of Europe to Paris to listen to Abelard"; and the traditions of Oxford and Cambridge were equally hospitable.

THE "NATIONS"

Before discussing the system of degrees, it is desirable to speak of the "men"—the candidates

for graduation; and, in this connexion, stress must be laid on the cosmopolitan character of our older universities, which welcomed with open arms students of various races and of all ranks of society. The Oxford statutes contain a provision for the proclamations being made in Latin, that language being, as it is stated, intelligible to the different nations represented by the scholars. In addition to the native youth, Welshmen, Irishmen, and Scots were accustomed to repair to the banks of the Isis and the Cam, and the two former of these classes—at any rate at their first coming—might have been totally ignorant of English.

The reader will hardly fail to have been struck with the occurrence of Welsh names in the foregoing pages; and the records of judicial proceedings mention the case of a Cambrian scholar, who stole a horse from the stable of an Oxford inn and decamped with it, in the company of several compatriots, to the Welsh mountains, in consequence of which the unhappy innkeeper had to defend a suit brought against him by the horse's owner! Notices of the Irish and the Scots are no less characteristic of their imputed traits. Of the presence of the former there is interesting testimony in petitions to the Crown on the part of scandalized townsmen, in one of which they set forth that "there have been murders, felonies, robberies, and riots, &c., lately committed in the counties of Oxford, Berks, Wilts, and Bucks, by persons coming to the town under the jurisdiction of the University, some of whom are the King's lieges born in Ireland and the others his enemies called 'Wylde Irisshmen'; and that these misdeeds continue daily to the scandal of the University and the ruin of the country round about; the malefactors threaten the

King's officers and the bailiffs of the town, so that these last, for fear of death, dare not do their duty and collect the fee-farm, &c. Pray therefore that all Irish be turned out of the realm between Christmas and Candlemas next, except graduates in the schools, beneficed clergy in England, those who have English father or mother, or English husband or wife, and many other exceptions, persons of good repute. And that graduates and beneficed men find surety for their good behaviour."

The Scots were cordially hated. Tryvytlam's poem *De Laude Oxoniæ* has the following stanzas, which, in the opinion of some, may be still apposite to the circumstances of University and national life:

Iam loco tercio procedit acrius
Armata bestia duobus cornibus.
Hanc Owtrede reputo, qui totis viribus
Verbis et opere insultat fratribus.
Hic Scottus genere perturbat Anglicos,
Auferre nititur viros intraneos.
Sic, sic, Oxonia, sic contra filios
Armas et promoves hostes et exteros.

By "Owtrede" is intended Uthred de Bolton, a celebrated English Benedictine, whose cognomen was probably derived from the manor of Bolton in Northumberland. It was a risky thing to hail from the Border, as another instance is recorded, in which a North-countryman found it necessary to purge himself of the imputation of being a Scot—one of the King's enemies.

The amazing part of the matter is that national distinctions and prejudices did not; as far as the British Isles were concerned, end here. In point of fact, when the word "nations" occurs in this connexion, the allusion is generally not so much to

genuine differences of descent, government, customs, and language, as to an artificial separation of the inhabitants of England into North and South countrymen. The authorities deplored this division into Boreals and Australs—"diverse nations, which, in truth, be not diverse"—but they could not ignore it, and thus it became the established rule that of the two proctors—officials supremely responsible for the peace—one should be of the North and the other of the South. As we have seen, a similar practice obtained with regard to the University chests. Just as, at the present time, Welshmen and Scotsmen gravitate towards particular colleges, so in the early days "nations" seem to have favoured certain halls, and as few of the latter were provided with chapels, they appear also to have fixed upon certain churches for the purpose of devotion or partisan display. Accordingly, about the year 1250, the following edict was fulminated with a view to checking the exuberance of the "national" spirit in sacred buildings:

"By the authority of the Lord the Chancellor and the Masters Regent, with the unanimous consent of the Non-Regent, it is decreed and resolved that no festival of any nation soever be celebrated henceforth in any church soever with the accustomed solemnity and calling together of Masters and Scholars or other acquaintances, save in so far as any may desire to celebrate the festival of any saint of his own diocese with devotion in his own parish, where he lives, but not calling the Masters and Scholars of a second parish or his own, as also is not done at the festivals of St. Katherine, St. Nicholas, and the like. This also, decreed by the authority of the same Chancellor, we enjoin to be observed, on pain of the greater excommunication, that none lead dances with masks

or any noise in churches or streets, or go anywhere wreathed or crowned with a crown composed of the leaves of trees, or flowers, or what not: on pain of excommunication, which we inflict from now, and of long imprisonment do we forbid it."

In 1252 a great disturbance arose between the Northern and Irish scholars, and it was resolved that twelve persons should be chosen on either side to draw up conditions of peace. These were that thirty or forty of each party should bind themselves not to disturb the peace of the University themselves nor comfort others in doing so, and they were to give secret information to the Chancellor if they should hear of any other person transgressing. If any one was injured, he was to appear before the Chancellor; and if the Chancellor was suspected of partiality, there were to be associated with him two assessors from either side.

In 1313 a statute was issued that no one was to stir up any nation on account of some personal injury by conspiracies, leagues or meetings in public or private with the name or title of nation; and that when the Chancellor or his Commissary inquired concerning a breach of the peace, none was to appear with other than the witnesses needful to him; nor was any Master or other to thrust himself in, coming with a party or sitting beside the Chancellor or his Commissary, save such as the Chancellor should hold it right to summon forth, if at any time it seemed to him fit. Seeing that the names of delinquents could be better learned through the Principals of Houses, who moved continually among their associates, it was determined that every Principal, resident or acting, as well of Halls as of Chambers, should, at the beginning of every year, within fifteen days or

sooner, as should seem fit to the Chancellor and Proctors, come and make corporal oath, that if they knew of any of their society holding such assemblies, or consenting with those who held them, or commonly and often naming different nations with evil zeal, or disturbing the peace of the University, or practising the art of bucklery, or keeping a whore in his house, or bearing arms or in any way promoting discord between Northerns and Southerns, he should within three days inform the Chancellor or one of the Proctors, and all such disturbers of the peace were to be punished with imprisonment. This oath the servants were bound to take at the same time; and the Chancellor and Proctors, as touching their part, acknowledged themselves to be equally bound by virtue of the statute.

In order that such distinction of nations might henceforth be detestable and hateful to all, it was resolved that the following clause should be added to the oath of every incepting Master with respect to the observance of peace:

"*Item*, Master, especially shall you swear that you will not hinder, as between Australs and Boreals, peace, concord, and affection; and if there shall have arisen any dissension between them, as between diverse nations, which in truth be not diverse, you will not foment or kindle it to the utmost, nor must you be present at assemblies, nor tacitly or expressly consent to them, but rather hinder them in such ways as you shall be able."

By the same statute the University was bound to intimate to the diocesan the names of all persons, whether Masters or others, who should disturb the peace of the University, and particularly as between the Northern and Southern students.

In 1428 fresh legislation was found to be necessary, and took the following form :

" Whereas there is no better way of punishing the disturbers of the peace than by a pecuniary fine, which in these days is more dreaded than anything else, therefore the following graduated scale of fines is put forth by the University. For threats and personal violence, twelve pence ; for carrying of weapons, two shillings ; for pushing with the shoulder or striking with the fist, four shillings ; for striking with a stone or club, six shillings and eightpence ; for striking with a knife, dagger, sword, axe, or other weapon of war, ten shillings; for carrying of bows and arrows, twenty shillings ; for gathering of armed men and conspiring to hinder the execution of justice, thirty shillings ; for resisting the execution of justice, or going about by night, forty shillings. And no Master or scholar shall take part with any other because he is of the same country nor against him because he is of a different country ; and if he be convicted of doing so, he shall incur an additional penalty graduated according to his pecuniary circumstances."

That the scholars indulged freely in the pleasant custom of hunting may, after this, be almost taken for granted. In a petition of the year 1421 complaint was made against them that they hunted with dogs and harriers in divers warrens, coningries, parks and forests in the counties of Oxford, Berks, and Bucks, night and day, taking deer, hares and rabbits, and menacing the wardens and keepers. Sometimes they contrived to combine their love of hunting with their love of street-fighting, as on the memorable occasion in Queen Elizabeth's reign, when the Magdalen men went deer-stealing in Shotover Forest, and one of

them was sent to prison by Lord Norris, the Lord Lieutenant of the county. In revenge, the next time my Lord came to Oxford, they set upon him at the Bear Inn, and, in the skirmish, several of the scholars were hurt, and "Binks," his lordship's keeper, sustained a severe wound. The Vice-Chancellor, intervening at this juncture, ordered the scholars to be confined to the college, while Lord Norris was requested to quit the University. Thereupon the former "went up to the top of their tower, and waiting till he should pass by towards Ricot, sent down a shower of stones they had picked up upon him and his retinue, wounding some and endangering others of their lives. It is said that upon the foresight of this storm divers had got boards, others tables on their heads to keep them from it, and that if the Lord had not been in his coach or chariot, he would certainly have been killed."—In the sequel, the culprits were banished, and the Lord Lieutenant placated, albeit "with much ado by the sages of the University."

How on earth serious study could be pursued amidst these perpetual broils, to the engendering of which so many prejudices contributed, would be an insoluble mystery but for the probability, suggested by experience of University life in our own day, that the disturbances were confined, in the main, to the wilder spirits, though it may well be that occasionally peaceable persons were sucked into the vortex by the accident of their being abroad at the time, and on the scene of the affray, where their pacific character would receive scant consideration from the angry combatants. *Esprit de corps* also was a powerful incentive to action, and one from which even Masters were not exempt. To this must be added that the course of study itself

seemed expressly devised to foster the belligerent temper. The air was laden with the breath of strife, as the Cambridge term "wrangler," which has survived to our day, plainly testifies.

The Highway of Learning

Let us follow the "poor boy," a technical expression at Oxford, through the stages of his academic career in that university. At the outset two courses were open to his parents or guardians. Either he might be sent to a religious foundation like Durham College, where he would be under no obligation to take vows, but an oath would be required of him to honour the monks and assist the electing church, to whatever station of life it might please God to call him. Or, as was infinitely more usual, he might be settled in a secular school of grammar in charge of a recognized master.

Before the rise of colleges, the vast majority of scholars resided in halls, some of which were kept by laymen. In 1421 the King, incensed at the constant breaches of the peace, commanded that all scholars and their servants should be under the governance of some sufficient principal approved by the Chancellor and Proctors, and should not be suffered to abide in laymen's houses. In 1432 a statute set forth that, whereas the principals of halls, fearing to lose their profits, did not punish the members of their societies, still less did they dismiss them, when it was their duty to do so; nay, even provoked disturbances—the consequence, it was believed, of illiterate persons and non-graduates keeping halls—it was ordained that henceforth all principals and their deputies must be graduates. In the preamble of another statute of

the same date it was complained that grave crimes were committed by so-called scholars, who, *nefando nomine* "chamberdekenys," lived in no hall, but slept away their days, and passed their nights in riot and debauchery, crime and violence. This irregularity it was found difficult to suppress, for on May 13, 1447, two persons feigning to be scholars and guilty of violence, having been summoned according to law throughout the schools and not appearing, were banished. The form of banishment was as follows: "*A*, *B*, *C*, *D*, frequently convicted of a monstrous disturbance of the peace, and, according to the manners and forms accustomed to be observed in this University, duly cited, publicly cried, lawfully awaited, and in no wise appearing, but contumaciously refusing to obey the law, alike on account of their contumacies and offences we do ban from this University, and from neighbouring places, admonishing firstly, secondly and thirdly, peremptorily, that none do receive, cherish, or protect the aforesaid *A*, *B*, *C*, *D*, on pain of imprisonment and the greater excommunication to be fulminated not unjustly against all who contravene."

Matriculation involved nothing more than an oath to keep the peace, which oath had to be taken also by the servant of the scholar, supposing him to have one. If the scholar chose a non-graduate teacher, he was compelled to enter his name in the books of some master of arts, and neglect to fulfil this requirement subjected the delinquent to the loss of the protection and privileges of the University *tam morte quam in vita*. At the commencement of every term as well as at the end, and at other times, when need was, the grammar-masters held a *convenite* for the purpose of arranging the course of study. Each of

them had to obtain a licence, and, as a test of his qualifications, he submitted to an examination in versification, dictation, and so forth, lest, as the statute quaintly expresses it, the language of Isaiah should be verified—*Multiplicasti gentem, non auxisti lætitiam.*

The masters were charged with the training of their scholars in religion and morals—an onerous duty in too many cases imperfectly performed. This is shown not only by the lawlessness prevalent in the University, but by the low views and low practices that characterized methods of instruction in secular subjects. The term "lecture," as commonly understood in the Middle Ages, implied or included a catechetical system of teaching, in which the master asked, and the scholar answered, a series of questions. This laborious, but effective mode of ascertaining and accelerating progress in knowledge was felt irksome by both parties, and "ordinary" lectures—or, as we should term them, lessons—were threatened with supersession by a seductive invention known as "cursory" lectures. These appear to have been neither more nor less than lectures in the modern sense. The master delivered his discourse, and the scholar was left to gather from it what degree of enlightenment he could or would. The statute referring to the subject taxes teachers with favouring scholars in this way, for the "hope of gain," which points to corrupt dealing between them. In both its moral and intellectual aspects the practice met with scant countenance from the authorities, and, save in special cases, any master indulging in it was liable to be punished with deprivation and imprisonment for so long a period as the Chancellor, in his discretion, deemed fit. One learns from an

undated statute, which, however, is probably of the thirteenth century, that grammar scholars were expected to construe in both English and French, the object being that the former language might not be utterly forgotten. When we recall that our ancient pleadings were in Norman-French, and that a sensible proportion of the students embraced that most conservative of professions, the law, the wisdom of this course is at once evident.

The grammar schools may be regarded as the nursery of the University, but not a few of the scholars, educated in monastic and other local schools, arrived with a knowledge of Latin sufficient to dispense them from preliminary instruction in that language, for that is what is meant by "grammar." It is not perhaps quite clear whether a schoolmaster's house ranked as a hall, but, as soon as a scholar was equipped with an adequate stock of Latin to enter upon his Artist's career, he would naturally move to one of the halls tenanted by his equals in learning, thus making room for another and younger person more strictly *in statu pupillari*. The age at which students began their academic course in earnest averaged from twelve to fifteen—needless to say, much earlier than at present. They were required to devote four years to qualifying for the degree of bachelor; and during the former part of this period they went by the curious name of "general sophist." This, the initial stage of University existence, was terminated by an examination, then and still called Responsions, which might not be taken in less than a year, after which the student became known as a "questionist." The occasion of responding was a high day with scholars, and celebrated with such extravagant feasts that we find

the Chancellor intervening to limit the expense attending them to sixteen pence. The meaning of the term "Responsions" is explained by the formula of the testamur : *Quæstionibus magistrorum scholarum in Parviso respondit.* The parvise, or porch, may have been symbolical of the initial stage—the early provisions of our universities are full of symbolism. By way of preparation for his examination the sophist was required to be diligent in attending disputations in the parvise, and when he presented himself for his own ordeal, he had to make oath that these exercises had been duly performed.

The third stage was reached when the "questionist," as he was now, stood for his bachelor's degree. This was known as Determination, because the candidate had to determine questions in which his recent acquisitions in logic should have enabled him to appear to advantage. According to the rule, this function took place either on Ash Wednesday or on some day between Ash Wednesday and the following Tuesday. However important Responsions may have been in the eyes of the youthful student, they paled before the elaborate ceremonies of Determination. In all the two-and-thirty schools of School-street sat the Masters Regent in full academical attire, their desks before them, it having been enacted that the exercises should be carried out in the schools, not in private dwellings or in churches. The statutes forbade unfairness in proposing questions or in the manner of examining, but the candidate was, to some extent, forearmed in this matter, since he might, apparently, select his own judge. As a good audience was considered a primary necessity by the masters, in order that their talents might obtain the widest possible recognition, well-wishers

seem to have gone so far as to drag into the schools reluctant passers-by—a nuisance of such frequent occurrence that it was forbidden by statute. An attempt was made also to prevent fees or robes being given to the masters, but the statute doubtless proved inoperative, and was afterwards repealed. Another custom, which the authorities vainly prohibited, and was plainly incongruous at the season of Lent, was the holding of feasts by bachelors on admission.

Before a scholar was permitted to determine, six masters at least had to testify on oath in congregation regarding his fitness in knowledge, morals, age, stature and personal appearance. They were bound to secrecy as to the nature of their testimony, the sufficiency of which was decided by four Regent Masters of Arts, two of the North and two of the South, eight days before Ash Wednesday. On the following Sunday, Monday, or Tuesday masters and scholars appeared before the four members of the Committee; and if the testimony had been satisfactory, the scholars made oath that they had completed the necessary studies, and were "admitted" to determine. Determination itself was largely a show, and had nothing to do with the attainment of the degree, of which it was rather the outward and visible sign. If the student failed to acquit himself with distinction, the only penalty to which he exposed himself was the censure or ridicule of friends and foes. Discomfiture was extremely probable, as the affair was an intellectual game, in which either the master laid himself out to pose the scholar, or a brace of scholars argued (or, as the phrase then ran, "disputed") by turns, under the supervision and correction of the master.

In conformity with modern usage, we have spoken of the status of Bachelor as a degree, but originally it is doubtful if the description would have been deemed accurate. Like the Master, the Bachelor might be a teacher, but his lectures were, for the most part, of an "extraordinary" or "supernumerary" character, and not allowed to compete with the "ordinary" lectures of the Master or Doctor. The number of bachelors so privileged—instances even occur of such half-finished clerks officiating as Principals of Halls—was probably very small, and much would have depended on age. As a rule, bachelors went on with their studies as before, attending the lectures of others, until three more years had elapsed, when they became eligible for Inception. At first it seems as if the terms "Determination" and "Inception" had somehow got transposed. In reality the latter word contemplates a state or condition which was only possible or usual when the scholar, having accomplished the full course of study, finally and definitely assumed the rights and duties of Master.

The fundamental distinction underlying all academic order was that of teacher and pupil. The licentiate, it is true, may be regarded as a hybrid, and the Doctor as an overgrown master—a master and something more; but the existence of these classes only obscures what was, nevertheless, the vital and essential principle on which University discipline was organized.

We have heard of licentiates once before—as excluded from University processions. This clearly implies no small amount of prejudice against them, but ere an attempt can be made to account for it, we must understand what, exactly, a licentiate was.

A licentiate, then, was a bachelor who had attended lectures for some time, had given lectures, and had been privately examined by members of his faculty. Having been presented by one of them, he had obtained from the Chancellor licence to perform certain exercises before the *conventus*, or meeting of the faculty, by which the degree was finally bestowed. The Chancellor's licence authorized the candidate to incept, to read (lecture), to dispute, and to do all that belonged to the rank of master as soon as he had taken the necessary steps for the purpose. The licentiate lectured in the schools, precisely like the master, for whom indeed he acted. The fee for the licence was one commons, which may represent a shilling—in any case, it was trivial. The cost of Inception, on the other hand, was very great on account of the feasts, etc., which accompanied it; and as the licentiate already enjoyed some of the privileges of the master, there was an evident temptation to put off the evil day. Security was therefore demanded from the licentiate that he would incept within a year; and, if he omitted to do so, he was fined. Nevertheless, students often remained in this category—neither fish nor fowl—beyond the allotted term, in fact, for years; and they probably furnished a considerable quota of the vagabond scholars, whose exactions have been recorded, and who certainly did not consist wholly and solely of "poor boys." One of the Cambridge statutes deals expressly with this baneful *materia vagandi*. These two reasons together fully explain the disfavour with which licentiates were regarded, and which ultimately led to the abolition of the status. At Cambridge it had ceased before Bedel Stokys' time (1574), for, when he wrote, the

licence was given by the Proctors at the vespers, or exercises, on the day preceding Inception.

We come now to Inception, or the degree of Master of Arts. The candidate was first presented to the Chancellor and Proctors by his master, who was called upon to make oath that he believed his pupil to be qualified for admission by his morals and learning. This testimony, however, was not enough. No fewer than fourteen masters had to depose, nine that they knew, and five that they believed the candidate to be fit. He was then presented to the Chancellor and Proctors in congregation, and, with hand laid upon the Bible, swore, in a kneeling posture, that he would keep the statutes, would actually incept—we shall see what this means presently—within a year, that he would not spend more at his inception than the sum allowed, that he would neither lecture nor hear lectures at Stamford [1]—*nefandum et detestabile nomen*—and that he would handle the books of the library with becoming care. Having assented to these and other conditions, he received the Chancellor's licence.

It is to be noted that the Chancellor merely *admitted*; he did not *create*. This was, and at Cambridge still is, the work of the faculty—the Proctors, as representative of the Arts, or the several "fathers" in the three superior faculties, for whom the Regius Professors are now substituted, in the junior University. At Oxford, since the promulgation of the Laudian statutes, the duty has been discharged by the Vice-Chancellor. In the faculty

[1] In 1334 a number of masters and scholars migrated to Stamford and attempted to found a University there. This is known as the Stamford Schism.

of grammar—the Cinderella of the faculties, which apparently did not of necessity involve any previous academical training—the master was presented with a palmër and a rod. In Arts a cap was placed on his head, and in the higher faculties the Master or Doctor was installed in a chair and received the hat, together with the book, the ring, and the kiss of peace—the three last, perhaps, in theology alone.

Inception properly signified the commencement of an active career as a teacher; and thus the new master would have taken precautions to secure a school as well as the articles of attire appertaining to his degree, including "pynsons," a kind of boot or shoe. He was also obliged to visit all the schools, invite the masters to be present on the day of inception, and provide them, one and all, with a suit of clothes. This was such a serious incubus that statutes were passed limiting such perquisites to kinsmen or members of the same hall; and it probably explains the custom of incepting for others —the rich acting for the poor. From every inceptor the bedels were entitled to a gratuity of twenty shillings and a pair of buckskin gloves, or an equivalent sum of money; and inceptors whose income amounted to forty pounds a year were compelled to feast all the Regent Masters or forfeit twenty marks to the University. The main distinction between Regent and Non-Regent Masters seems to have been that the former were perforce teachers, in which condition they were obliged to remain during the remainder of the year in which they incepted and for a twelvemonth afterwards. In the case of the Non-Regents, who had exceeded this period of probation, lecturing appears to have

been optional. The Regent Master was required to devote forty days of his novitiate to disputation.

Inception feasts were apt to degenerate into occasions of riot, and in 1432 the following statute was passed with a view to regulating them:

"Whereas at the feasts held at graduations there occur such disorderly scenes and violence that more annoyance and disgrace than pleasure is caused to the host himself and all his guests, the University, for the prevention of such disorders for the future, hereby orders that no one shall stop the ingress and egress of any master or his servants to or from the hall or tent or other place where the feast is being held; and that no one, except the servants of the University, or of the host, shall enter the said hall, until after the masters, who have been invited, have entered with their servants; and after they have sat down, no one shall sit down, except by the appointment of the Chancellor and in proper order according to rank; and no one shall beat the doors, tables, or roof, or throw stones or other missiles so as to disturb the guests, on pain of imprisonment, excommunication, and a fine of twelve pence."

As these convivialities were so unpleasant, and even dangerous, it may seem that it would have been the obvious course to prohibit them altogether, as in the case of determining bachelors; but the University clung to its feasts, and in 1478 fresh rules were made, this time with the special aim of bleeding or mulcting the intrusive friars and the wealthy monks.

"Every mendicant friar shall, on the day of his inception, feast the Regent Masters according to ancient custom, or forfeit ten marks to the University; and every such incepting friar must be a

regent for twenty-four months from his inception. And every religious possessing private property, and not being an abbot or prior or other governor of a conventual house, the rents of whose society amount to two hundred pounds yearly, must on the day of inception feast the Regents or pay twenty pounds to the University in lieu of a feast. And every secular, who can spend forty pounds a year at the University, must, in default of such feast, forfeit twenty marks; and, if he can afford to spend one hundred pounds, must forfeit twenty pounds."

Brief reference must here be made to the relations between the mendicant orders and the University in general, if only because the memory of the former was perpetuated, long after the disappearance of the fraternities, in the famous term "Austins." Those relations were, for a considerable time, the reverse of friendly. The friars complained that degrees in theology were refused them; the University accused the friars, among other enormities, of "stealing children." To prevent such abduction, in 1358 the following statute was passed:

"The nobles and people generally are afraid to send their sons to Oxford, lest they should be induced by the mendicant friars to join their order; it is therefore hereby enacted that if any mendicant friar shall induce or cause to be induced any member of the University under eighteen years of age to join the said friars, or shall in any way assist in the abduction, no graduate belonging to the cloister or society of which such friar is a member, shall be permitted to give or attend lectures in Oxford or elsewhere for a year ensuing."

This enactment was repealed eight years later; but in 1414, when forty-six articles were drawn up by

the University of Oxford, addressed to the Council of Constance, it was urgently represented that the friars should be restrained from granting absolution on easy terms, from *stealing children*, and from begging for alms in the house of God. Their adversaries also warmly denounced the nefarious conduct of "wax-doctors," or ignorant friars, in seeking to obtain graces for degrees by means of letters from influential persons; and in 1358 their indignation bore fruit in a very stringent statute bearing upon the subject.

It is difficult not to think that a large part of this antagonism was caused by envy of the friars. For one thing, they were excellent grammarians, and eventually almost all elementary instruction passed into their hands with the full approval of the authorities, who ordered that payment should be made to them, as the actual teachers, and no longer to the idle grammar-masters. This, however, is only a tithe of the service rendered by the friars to the University, which owed an immense obligation to them. The Dominicans, Franciscans, Carmelites, and Austins, all settled at Oxford, and rendered invaluable service to the cause of learning. The most erudite were perhaps the Franciscans, who arrived in 1224 and established themselves in St. Ebbe's parish in houses and lands assigned to them by Richard le Mercer, Richard le Miller and others; and their possessions were enlarged and confirmed by Henry III., their chief benefactor.

Such was the fame of the Franciscan friary that in 1353 Bishop Grosseteste, of Lincoln, left all his books to the brotherhood, whilst Bishop Hugo de Balsham, founder of Peterhouse, Cambridge, in his statutes, dating about 1280, directed that some of

the scholars should annually repair to Oxford for improvement in the sciences under Franciscan and other readers. It was in this seminary that Roger Bacon, so renowned for his devotion to science and mathematics in the barbarous ages, received his education. The priory, with the fine chapel and large enclosures belonging to it, was granted in the thirty-sixth year of Henry VIII. (1534), to two persons named Richard Andrews and John Howe, who sold it the same year to one Richard Gunter.

We are, however, chiefly concerned with the Austins, whose priory had a similar history. In 1351 Pope Innocent IV. empowered the Friars Eremites of St. Austin to travel into all lands, found houses, and celebrate divine service. Here in England they were first domiciled in London, but certain of the brethren were deputed to journey to Oxford, where they hired a small house near the Public Schools. Their attainments in divinity and philosophy having attracted the attention of a rich Buckinghamshire knight, Sir John Handlove, or Handlow, of Burstall, he bought a piece of ground for them, and this was afterwards enlarged by a gift from Henry III. Upon this they erected a splendid college and chapel, in which, before the Divinity School was built, the University Acts were deposited, and exercises in Arts performed. It was particularly enjoined that every Bachelor of Arts should dispute once a year, and answer once a year, in this house—a rule enforced until the dissolution. The disputations were then removed to St. Mary's, and afterwards to the Schools, but they still retained the name they had so long borne—"disputations in Austins."

Candidates for degrees in the higher faculties—Law, Medicine, and Theology—had to undergo the

same experiences as were prescribed for the faculty of Arts. That is to say, they had to respond, to dispute, to determine, and to incept. Regents from other universities were permitted to lecture at Oxford after determining in the schools of their respective faculties, and those "resuming," as the phrase was, in Arts were required to determine at least thrice in the schools of the Masters Regent, once in grammar and twice in logic. This liberal spirit was tempered by common sense, since only those were admitted whose *almæ matres* received Oxford graduates on equivalent terms. At Paris and elsewhere the sons of Oxford were, it was complained, maliciously shut out from academic privileges, and accordingly those proceeding from such places had the same measure meted out to them at Oxford.

In a chapter like the present it seems fitting to furnish an account of a typical round in a mediæval university. Ample material exists for this reconstruction as regards Oxford, but that University—the senior of the two, and the model of the other, as Paris was of it—has already absorbed a large share of our attention.[1] We will therefore turn our eyes to Cambridge, and to a period somewhat later than the times on which we have mainly dwelt—*i.e.* that which followed the institution of colleges.

[1] The University of Cambridge is believed to have been founded in consequence of a migration from Oxford in 1209. The relative space assigned to Oxford, as the typical English University of the Middle Ages, in the present work, may be justified by some words of Mr. Blakiston: "The University of Cambridge, occupying a less central and more unhealthy situation, and having less powerful protectors, did not compete in popularity and privileges with the older society before the sixteenth century. It was not even formally recognized till it received the licence of Pope John XXII. in 1318. . . . Oxford schools were renowned as a 'staple product' at a time when Cambridge was famous only for eels."

At both Universities the colleges were closely associated with the Church, but if any may be pointed out as pre-eminently designed for the study of theology, it was surely St. John's College, Cambridge, whose saintly foundress, Margaret, Countess of Richmond, and mother of Henry VII., proclaimed as her objects "the worship of God, uprightness of manners, and the strengthening of the Christian faith."

Three of the scholars were appointed by the Deans *ministri sacelli* (servants of the sanctuary), of whom one had to act as sub-sacrist at morning mass and ring the bell at certain hours, whilst the two others were clock-keepers and bell-ringers.

The first act of the day was the ringing of the great bell at four o'clock in the morning—a duty which devolved on the third of the *ministri sacelli*. "Let the third ring the great bell of the College every day, except on Good Friday and Easter Eve, as was wont to be done before the College was founded. Let it ring at the fourth hour, that those throughout the whole University, who wish to rise at that hour and apply themselves to their studies, may more easily rouse themselves at the sound of the bell."

The earliest Chapel service—morning mass—was over before six, after which three lecturers were engaged for two hours in teaching and examining the scholars and bachelors and hearing their recitations.

Disputations in philosophy were held on Mondays, and on Wednesdays and Fridays similar exercises took place in theology, each disputation lasting two hours, and two questions from Duns Scotus being discussed.

Each priest was obliged to celebrate mass four

times a week, a fine of fourpence being imposed if he failed to celebrate three times; and each fellow and scholar had to say daily the psalm *De Profundis*, the suffrages, and a prayer for the souls of the foundress and other departed benefactors. These constituted quite a long list, and included Henry VI., Henry VII., Henry VIII., Cardinal Wolsey, and James Stanley, Bishop of Ely, who gave the old hospital to the college. Another benefactor was Bishop Fisher, who established two fellowships and two scholarships; and priests on this foundation were required to say four masses weekly for his soul and the soul of Lady Margaret, his "second mother." Those who were not priests had to say daily the psalm *De Profundis*, the suffrages, and the prayer *Fidelium Deus omnium conditor.*

"Also on all Sundays and other festivals the Masters, Fellows, and Scholars shall say Mattins, Sprinkling of Holy Water, Procession, Mass, and Vespers and Compline, according to the ancient use of the Church of Sarum, at convenient times, as the Master shall appoint."

A fourth part—that is, seven—of the fellows were told off to preach to the people in English, and at least eight sermons were delivered in the course of the year, one in the college chapel. Should this last be omitted, the defaulter lost his fellowship. On the other hand, preaching was encouraged by the concession of various privileges, such as the salary of a mark, exemption from college office and disputations, a week's commons for every sermon, leave of absence from college, and the right of holding benefices. The scholars were interdicted from mocking the preacher "either by word, gesture, or grimace," the penalty for such behaviour being a

flogging. Each preacher, besides the delivery of sermons, had to expound the Bible lessons read in hall daily, except on particular festivals. By the way, the reading aloud of the Bible in hall during meals was inflicted by the Master on disorderly scholars as a punishment and an alternative to feeding alone in hall on bread and water.

Six monitors were chosen from among the scholars by the Deans, and of these two put bad marks against those who absented themselves from chapel or lecture, whilst four reported misbehaviour in hall or the use of any language other than Latin, Greek, Hebrew, Chaldee, or Arabic. Breach of the latter rule subjected the offender to the fine of a half-penny, if a fellow, and a farthing if a scholar. Every week seven scholars were appointed to wait in hall, and an eighth to read the Bible aloud during dinner —not always as a penal and ignominious task.

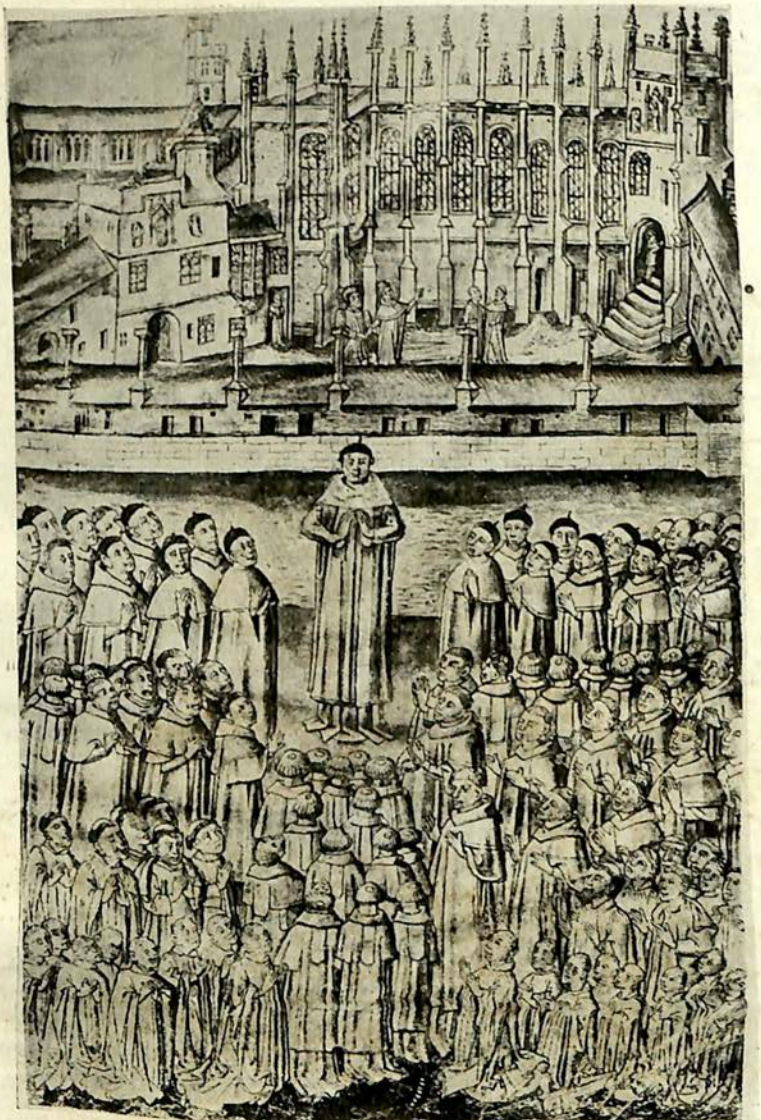
The statutes, in a general way, permitted no dallying in hall after meals—a prohibition for which the following reasons are advanced: "Abuse, slander, strife, scandal, wordiness, and other faults of the tongue rarely accompany an empty, but often a well-filled stomach." It was therefore ordained that after grace had been said and the loving-cup had gone round, the fellows and scholars should, without long delay, betake themselves to their studies. But the rule was not to be unduly pressed. "If in honour of God or of His glorious Mother, or one of the saints, a fire is lighted in hall, for the comfort of those who dwell in the college . . . then we allow them to remain for the sake of moderate recreation and amuse themselves with singing or repeating poetry or tales, or with other literary pastime." Conversely, "excessive noise, laughter, singing

dancing, and the beating of musical instruments in the bedrooms" were sternly denied.

On Parade

We have now embodied in this and the two preceding chapters practically all the information relating to University life that can be conveniently included in a small volume. It is unnecessary to state that, were more space at our disposal, many other features might be incorporated—notably University costume, which was the subject of endless regulations. As the topic is so large and complex, we must reluctantly forgo any proper discussion of it, but it seems needful to subjoin a few remarks designed to throw light on our picture, "New College on Parade."

In the middle, fronting the spectator, is the Warden —none other than the worshipful Thomas Chandler, whose name has been several times mentioned in these pages. He wears a cassock, and over that what may be a sleeved cope or tabard. Over that again is a tippet, a development of the almuce, or worn over it. No hood is visible. On his head is the *pileus* with tuft or point. The common meaning of these terms, still less their emblematic significance, will not be universally understood. A sleeved cope, then, was the distinctive garb of a canonist not in holy orders, and as Thomas Chandler became S.T.P. in 1450, the *cappa manicata* would be obviously out of place on his person. The tabard, generally associated with heralds, was a sleeveless garment, worn with and probably over the gown, with which it was afterwards combined, and the sleeves of which, at that period, came through the



NEW COLLEGE ON PARADE

(From "Archaeologia," vol. LIII. pt. i)

armholes. This garment, a dress of dignity, might be worn by undergraduates, and was compulsory in the case of bachelors lecturing in the schools. The scholars of Queen's College, Oxford, are still officially styled Tabarders.

The tippet was an academic adaptation of the ecclesiastical almuce, and was not the same as the hood, although the almuce seems to have been in the first place nothing but an ordinary hood with a lining of fur to keep out the cold. The original meaning of "typet" was the poke of the cowl, in which, the reader may happen to remember, Chaucer's Frere was in the habit of carrying his knives and pins. Academically, it was a distinct article of dress, lined with fur, and formed part of the insignia of the Doctor or Master.

The *pileus* was the hat of honour, evolved from the ecclesiastical skull-cap, and was distinctive of the higher degrees, particularly of that of doctor. Indeed, it has been thought that this class alone is designated by the term *pileati* found in our old statutes. From the thirteenth century onwards *pilei*, and the over-topping tufts, were of various colours according to the faculties, which it was intended to distinguish. It may be added that red, and even green, gowns were worn by the higher graduates, as appears from wills proved in the Chancellor's Court at Oxford.

Next to the Warden, on each side, are two figures in sleeveless copes, tippets and *pilei*, without hoods—Doctors in Theology or Degrees. More in the background are other *pileati*, wearing both tippet and hood; and through the armholes of their outer garments show the tight sleeves of the cassock. These may be secular doctors, or they may be bachelors of divinity or masters of arts. Five on the

extreme right have no *pileus*. Following them are persons wearing hoods and tippets over what may be a tabard, to which are attached loose sleeves or flats, with the tight sleeves of the cassock appearing underneath. This is the most numerous class represented in the picture, and seems to have comprised masters and bachelors of the faculties, with the exception, probably, of theology.

Facing the Warden are younger persons, attired similarly to the last, who may be bachelors of arts; and to the right and left of these are older individuals, severely tonsured, the majority of whom wear surplices. If Mr. Clark's conjecture be correct, they are the clerical members of the choir. Two of them have a scarf over a surplice or, as is more likely, a loose-sleeved cassock. Lowest in rank are the surpliced choristers wearing hoods, with, in some instances, a liripipe depending from them behind.

JUDICIAL

CHAPTER X

THE ORDER OF THE COIF

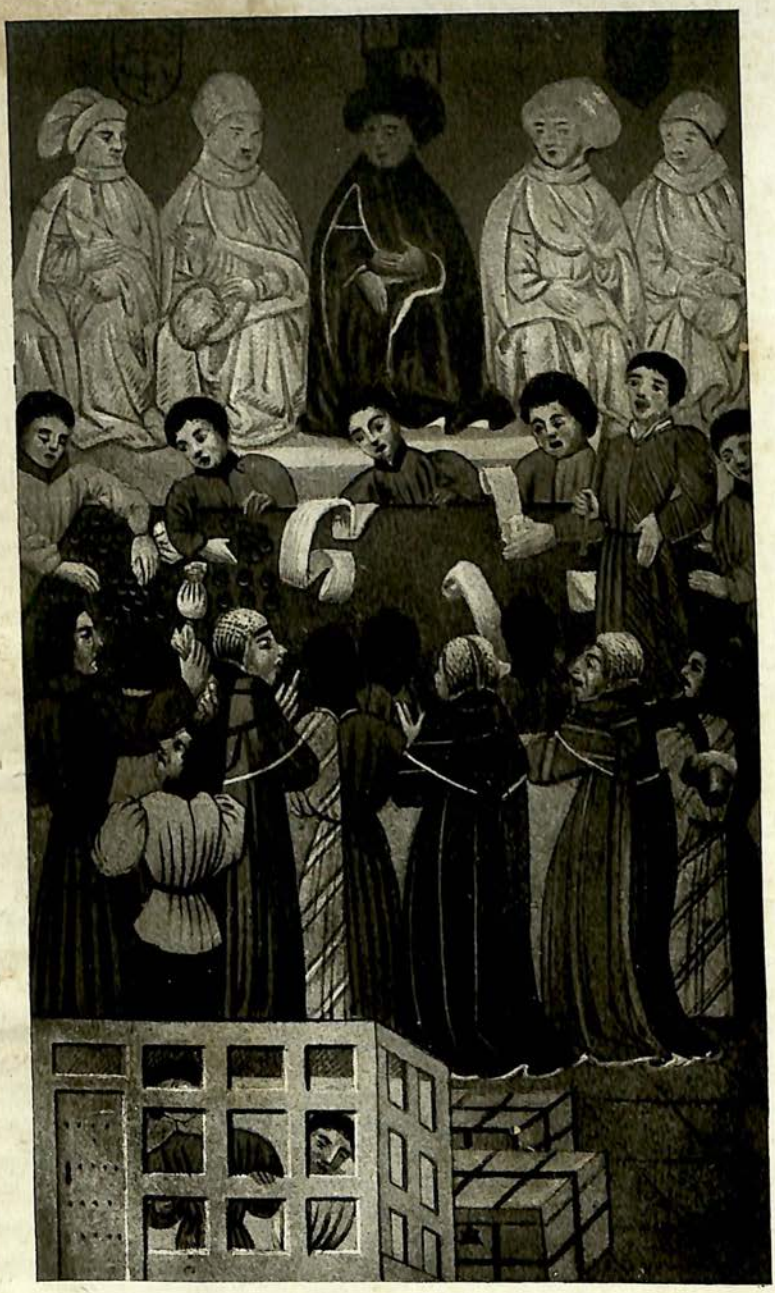
BETWEEN the Universities and the Judiciary of England in ancient times there existed a close link, which is to be found in the *serviens ad legem* or Serjeant-at-Law. He was at once a graduate, and a public official concerned with the administration of justice either as a recognized pleader or as a judge, for, whether in the higher or lower grade, he owed his credentials to the Crown.

We will consider the Serjeant-at-Law in the first place in his academic character, in which he might rank as a B.C.L. or as a Doctor Legum, though this is not quite what we intended by graduation. Law, like the other liberal professions, has always been regardful of outward and visible signs. This being so, we trust we have committed no very serious sin of plagiarism in borrowing as the heading of this chapter the title of a well-known work by Serjeant Pulling, one of the last survivors of the order. At any rate, the plagiarism is open and avowed.

Though the most significant, the coif was not the only exterior note of the Serjeant, in contradistinction

to the layman; and, in order to show how he appeared, when in full professional attire, we think we cannot do better than quote from a fifteenth-century lawyer, one of our greatest authorities on such matters—Serjeant Fortescue. Writing about 1467, he says of his class that they were "clothed in a long robe, priest-like, with a furred cape about the shoulders; and therefrom a hood with two labels, such as Doctors use to wear in certain Universities, with the above-described quoyf." The "long robe"—the proverbial emblem of the legal profession—evidently corresponds with the cassock, the "furred cape" to the tippet, and the "labels" probably belonged, not, as Fortescue seems to intimate, to the hood, but were rather the strings of the coif, which were the attribute of Doctors of Laws. Here we have all the marks of graduation—that is, the process necessary for the lawful exercise of a learned calling—and graduation might be equally accomplished in the schools of Oxford and Cambridge and the Inns of Court.

As regards the remainder of his dress, the Serjeant-at-Law might pass for a Master of Arts or a Bachelor of Divinity. The distinguishing feature is the coif, and, wherever it is discovered, it may be safely accepted as a criterion. Thus in Gosfield Church, Essex, there is an interesting brass of Thomas Rolf (d. 1440), who is represented as wearing a cassock, sleeved tabard, tippet, hood, and coif. The last-mentioned forms a circle round the head, and attached to it are two loops or lappets, which appear below the hood. Boutell has figured this brass, which he states to be that of a serjeant-at-law. The inscription, which has the words *legi professus*, already pointed to that conclusion, Rolf



A SCENE IN THE COURT OF EXCHEQUER.
(From a MS. at the Inner Temple)

being devoted to law, as, under the circumstances, he might have been devoted to religion.

To any one interested in the study of origins, the symbolic value of the coif is very considerable. Like the *pileus*, it may be traced back to the ecclesiastical skull-cap, the corollary of tonsure. In the Dark Ages the lawyers were almost invariably clergy, in the modern sense of the term. By the thirteenth century the original skull-cap, while retaining its general shape, had developed into a head-dress of ampler proportions, and, as such, might, and did, serve as a complete disguise of the clerical calling. For that reason it was forbidden to the clergy by Othobon's Constitutions (1268), except as a night or travelling cap. Like the serjeant's coif of more recent date, it was white in colour; and, as an appanage of the legal profession, it was worn by judges and pleaders alike. The strings were used to tie the coif to the head, and were fastened under the chin. It has been plausibly suggested that the Black Cap which judges assume, when passing sentence of death, was a device for concealing the coif, ecclesiastical justices being debarred from pronouncing capital sentence; and in this connexion we may recall the constitutional tradition, which requires the Bishops to withdraw when issues involving life or death come before the Parliamentary Courts.

We have spoken of *graduation* in relation to law. As an explanation of the phrase, nothing could be more apt than a passage in Coke's Third Report, which, although somewhat lengthy, deserves to be cited *in toto*.

"As there be in the Universities of Cambridge and Oxford divers degrees, as general Sophisters, Bachelors, Masters, Doctors, of whom be chosen men

for eminent and judicial places, both in the Church and Ecclesiastical Courts, so in the profession of the law there are Mootemen [*i.e.* students], which are those that argue readers' cases in houses of Chancery, both in terms and grand vacations. Of Mootemen, after eight years' study or thereabouts, are chosen Utter-barristers; of these are chosen Readers in inns of Chancery. Of Utter-barristers, after they have been of that degree twelve years at least, are chosen Benchers or Ancients; of which one, that is of the puisne sort, reads yearly in summer vacation, and is called a Single Reader; and one of the Ancients that had formerly read reads in Lent vacation and is called a Double Reader, and commonly it is between his first and second reading about nine or ten years. And out of these the King makes choice of his Attorney and Solicitor General, his Attorney of the Court of Wards and Liveries, and Attorney of the Duchy; and of these Readers are Serjeants elected by the King, and are, by the King's writ, called *ad statum et gradum servientis ad legem;* and out of these the King electeth one, two, or three, as please him, to be Serjeants, which are called the King's Serjeants; of Serjeants are by the King also constituted the honourable and reverend Judges and sages of the law. For the young student, which most commonly cometh from one of the Universities, for his entrance or beginning were first instituted and erected eight Houses of Chancery, to learn there the elements of the law, that is to say, Clifford's inn, Lyon's inn, Clement's inn, Staple's inn, Furnival's inn, Thavie's inn, and New inn; and each of these consists of forty or thereabouts; for the Readers, Utter-barristers, Mootemen, and inferior Students are four famous and renowned

Colleges or Houses of Court, called the Inner Temple, to which the first three Houses of Chancery appertain ; Gray's Inn, to which the next two belong; Lincoln's Inn, which enjoyeth the last two but one ; and the Middle Temple, which hath only the last; each of the Houses of Court consists of Readers above twenty; of Utter-barristers above thrice so many; of young Gentlemen about the number of eight or nine score, who there spend their time in study of law and in commendable exercises fit for gentlemen; the Judges of the law and Serjeants, being commonly above the number of twenty, are equally distinguished into two higher and more eminent Houses, called Serjeant's Inn ; all these are not far distant from one another, and altogether do make *the most famous university for profession of law only*, or of any one human science, that is in the world, and advanceth itself above all others, *quantum inter viburna cupressus.* In which Houses of Court and Chancery the readings and other exercises of the law therein continually used are most excellent and behoofful for attaining to the knowledge of these laws; and of these things the taste shall suffice, for they would require, if they should be treated of, a treatise by itself."

This passage has been cited for the special purpose of exhibiting the close affinity between the Universities and the Law, for which, it will be generally conceded, it is admirably suited. It is necessary, however, that it should be pointed out that the learned Coke was writing at and of a period when the system was full-blown. In the early period when "hostels" for apprentices of the law began to be, no distinction obtained into Inns of Court and Inns of Chancery. These apprentices were no doubt,

originally, just what the term implies, but their importance became greater until their representative is now the ordinary barrister-at-law.

In the year 1292—a date of some significance for us, not only in the immediate context, but with reference to other portions of the work—the King (Edward I.) promulgated an ordinance *De Attornatis et Apprenticiis* in which he enjoined on John de Metingham and his fellows that they should, at their discretion, " provide and ordain from every county certain attorneys and lawyers of the best and most apt for their learning and skill, who might do service to his court and that people, and those so chosen only, and no other, should follow his court and transact the affairs therein, the said King and his council deeming the number of seven score sufficient for that employment, but leaving it to the discretion of the judges to add to or diminish the number, as they should see fit " (Dugdale's Tr.)

Serjeant Pulling is somewhat perplexed concerning the precise position of the *apprenticii ad legem* at the time of this edict. He, however, hazards the conjecture that " by the apprentices were meant the advanced students, or learners of the law, who, as pupils or assistants to the Serjeants of the Coif, had obtained an insight into practice, and perhaps also there were included the more irregular followers of the law—the *dilettante* practitioners and Cleri Causidici, who continued to follow the law in the secular courts in spite of repeated prohibitions and objections."

With the foundation and growth of the Inns of Court, the apprentices—the better sort at least—obtained full recognition as practitioners ; and at the close of the fourteenth century their reputation had

become so considerable that the great apprentices had formed themselves into a distinct order, in which they stood next to serjeants-at-law, the gradation being as follows:

(i) Serjeants-at-law.
(ii) Nobiliores, or great apprentices.
(iii) Other apprentices who followed the law.
(iv) Apprentices of less estate, and attorneys.

The term "apprentice-at-law" yielded to *apprenticius ad barros*, and that again to "utter-barrister," corresponding to the modern "barrister-at-law." Not all the students admitted at an inn were "called" to the bar, the truth being that only a small proportion received that distinction. In 1596 an arrangement was made by the Judges and Benchers of the four Inns of Court, by which it was agreed:

"That hereafter none shall be admitted to the Barr but only such as be at the least seven years' continuance, and have kept the exercises within the House and abroad in Inns of Chancery, according to the orders of the House:

"*Item*, that there be in one year only four Utter-Barristers called in any Inne of Court (that is to say) in Easter Term, two, and, in Michaelmas Term, two, etc."

Again, certain orders, made for the better government of the Inns of Court and Chancery in 1624, provided that not more than eight members of any one Inn should be called to the bar in any one year, and that no Utter-Barristers, except such as had been Readers in Houses of Chancery should begin to practise publicly at any bar at Westminster until they had been three years at the bar.

As regards the Inns of Court, their precise origin cannot be clearly ascertained. We hear of them in the reign of Edward III., mention being made in the Year Book of 1354 of "les apprentices en Hostells." In the opinion of Lord Mansfield they were at the outset "voluntary societies," for they "are," he says, "not corporations and have no charter from the Crown." Serjeant Pulling holds that the smaller houses were hired by the apprentices, and then by lease or purchase possession became permanent. The greater houses, he thinks, had a similar history. This belief is borne out by what happened in the case of the Temple. In 1324, when the King granted the Knights Hospitallers the New Temple, the latter let the Temple to "divers apprentices of the law that came from Thaveis Inn in Holborn." This was evidently in existence at the time. How long it had existed prior to 1324 cannot be stated, but in his will dated 1348 and enrolled in the Court of Hustings of the City of London, John Tavye, citizen and armourer, devised to his wife Alicia "illud hospitium, in quo apprenticii legis habitare solebant." In all probability, therefore, the existence of the Inn did not go back farther than the lifetime of the armourer. The notice seems to show also that the Inns received their names not from Serjeants, as fathers of the apprentices, but from the actual owners.

Till about the commencement of the sixteenth century we are wholly in the dark as to the management of the Inns. We then hear of Governors, Treasurers, and the control of affairs in the different houses lay with the senior members of the societies, who were styled ancients or Benchers. The apprentices may be regarded as inchoate serjeants—serjeants in the making, persons on the way to

become serjeants. The serjeants had their own inns; and, on joining the brotherhood, the newly-appointed dignitary was rung out of the Inn to which he had previously belonged by the chapel bell.

As we have seen, the degree of serjeant-at-law is at least as old as the thirteenth century, and at the close of the following century was already at the acme of its glory. This appears from Chaucer's Prologue:

A sergeant of the lawe, war and wise,
That often hadde been at *the parvys*
Ther was also, ful riche of excellence.
Discreet he was, and of greet reverence:
He semed swich, his wordes weren so wyse,
Justice he was ful often in assyse,
By patente, and by pleyn commissioun:
For his science, and for his heigh renoun,
Of fees and robes hadde he many oon.
So greet a purchasour was nowher noon.
Al was fee simple to him in effect,
His purchasing mighte nat been infect.
Nowher so bisy a man as he ther nas,
And yet he semed bisier than he was.
In termes hadde he caas and domes alle,
That from the tyme of King William were falle.
Therto he coude endyte, and make a thing,
Ther coude no wight pinche at his wryting;
And every statut coude he pleyn by rote.
He rood but hoomly in a medlee cote
Girt with a ceint of silk, with barres smale;
Of his array telle I no lenger tale.

From Fortescue's *De Laudibus Legum Angliæ*, written in France after his withdrawal to that country with Queen Margaret in 1463, we learn that the rule was, when the degree of serjeant-at-law was to be conferred, for the Chief Justice of the Common Pleas, with the consent of the other justices, to

nominate for the purpose seven or eight of the most experienced professors of the common law. Thereupon the Lord Chancellor issued a writ to each of them, summoning them to appear under a heavy penalty, and take upon themselves the state and degree of serjeant-at-law. On duly presenting themselves they affirmed on oath that they would be ready on a day and at a place, which were then determined, to assume the said state and degree, and that they would *give gold* according to custom of the realm in such cases ("dabit aurum secundum consuetudinem regni in hoc casu usitatam").

On the date in question a feast was begun, which continued for seven days, and this, with other ceremonies, involved an expenditure, on the part of each *débutant*, of some 1600 nobles or 400 marks. A portion of this amount went to the purchase of gold rings, and Fortescue tells us that, when he was called to the degree of serjeant, the rings he gave away cost him £40. These differed in value in proportion to the dignity of the persons to whom they were presented. The most costly were those of the value of 26*s.* 8*d.*, which were given to every prince, duke, and archbishop attending the ceremony, as also to the Lord Chancellor and Treasurer of England. The Keeper of the Privy Seal, the Chief Justices, the Chief Baron of the Exchequer, and every earl and bishop present received one of the value of 20*s.*; while every baron of parliament, every abbot, every distinguished prelate (*notabili prelato*), and every eminent knight there present had one of 13*s.* 4*d.* Similar gifts were made to the Keeper of the Rolls of the King's Chancery, and to each of the justices. Rings of inferior value were presented to every baron of the Exchequer, chamberlain, officer,

and principal person serving in the King's courts, according to their rank; and thus almost every clerk, especially if he were of the Common Pleas, obtained a share of the new serjeant's liberality. His private friends were not forgotten, rings being distributed among them also. It has been computed that the sum of 400 marks in 1429 would be equivalent to £2,660 of our present money; hence we need not wonder that lawyers either too poor or too economical to welcome this heavy burden, sought to evade the honour. In the time of Henry V. six grave and famous apprentices respectfully declined the elevation, but in vain. They were called before Parliament, and there bidden to take upon them the state and degree of serjeant. Eventually they did so, and certain of them, as we learn from Sir Edward Coke, worthily served the King in the principal offices of the law.

The reader will not fail to have observed the expression "give gold." This, with the particulars adduced respecting the worth of the rings, suggests that the articles were esteemed, not for their commemorative character or artistic interest, but for their sheer pecuniary value. That this was the case is pretty evident from the fact that in the reign of Charles II. Lord Chief Justice Kelynge, addressing one of the new serjeants, rebuked them for their gift of rings *weighing* no more than 18*s.* each; and he cited Fortescue as saying, "The rings given to the Chief Justices and the Chief Baron ought to weigh 20*s.* a-piece." To prevent misunderstanding, he added that he "spoke not this, expecting a recompense," but that it might not be drawn into a precedent. In point of fact, Fortescue refers to value, not weight; but it appears to have

been customary to calculate the value of the rings by the worth of their weight in gold.

Perhaps the earliest motto is one engraved on rings in 19 and 20 Elizabeth—LEX REGIS. In 1625 three serjeants were called, one of whom had a different motto from his brethren. Walter and Trevor, who had been Attorney- and Solicitor-General to Charles I. as Prince of Wales, chose REGI LEGI SERVIRE LIBERTAS, and Yelverton STAT LEGE CORONA. These mottoes, so opposite in sentiment, are sufficiently remarkable in view of what was to befall. It may be noted that all three persons were made serjeants with the object of raising them to the bench. By ancient custom the common-law judges were always admitted to the order of serjeants before sitting as judges, and they always addressed a serjeant as brother.

Mention has been made of the speeches addressed by the Chief Justice to the serjeants on their creation. In 1579 Chief Justice Dyer recommended his new brethren "to be discreet, to ride with six horses and their sumpter on long journeys, to wear their habit most commonly in all places at good assemblies, and to ride in a short gown." The phrase "*riding* the circuit" was constantly applied to the judges and serjeants, and originated from this circumstance. A regular procession was made to Westminster Hall at the opening of the Courts, and, singularly enough, up to the middle of the sixteenth century the judges used *mules*.

The creation of serjeants took place in the hall of the Serjeants' Inn, of which the Lord Chief Justice for the time being was a member. The newly called arrived in a black robe, attended by his clerk, who brought with him on his arm a scarlet hood

and a coif. The Chief Justice, having solemnly addressed the serjeants, began the ceremony of investiture, first placing the coif on the head of each of them and tying it under his chin; and then putting the hood upon his right side and over his right shoulder. The serjeant thereupon departed, and, doffing his black robe, assumed a parti-coloured robe of black and murrey (dark red) and hood of the same colours. Thus arrayed he proceeded to Westminster, his man carrying before him the scarlet hood and cornered cap upon it.

Cornered caps were worn by the judges and serjeants when they attended church in state. Down to the time of the Reformation it was the practice for them to visit St. Thomas of Acons in Cheapside, and, having made their offerings there, to go on to St. Paul's, where they offered at the rood of the north door at St. Erkenwald's shrine. This custom was always observed on the admission of new serjeants, who set forth on this pious errand after dining. At St. Paul's each of them was appointed to his pillar in the nave of the cathedral by the steward and controller of the feast. It was at the parvise, or porch, of old St. Paul's, or at their allotted pillars, that serjeants met their clients for consultation. They assisted the rich *pur son donaut* and the poor for nothing, and there appears to have been no question of any intervention by attorneys. In this connexion it may be worth while to cite the ancient oath which was taken by members of the order:

"You shall swear well and truly to serve the King's people as one of the serjeants-at-law; and you shall truly counsel them that you be retained with, after your cunning; and you shall not defer,

or delay their causes willingly, for covetousness of money, or other things that may turn you to profit, and you shall give due attendance accordingly; so help you God."

A few months before the Great Fire of London, in which old St. Paul's was consumed with its parvise and pillars, Dugdale wrote: "At St. Paul's each lawyer and serjeant at his pillar heard his client's cause and took notes thereof upon his knee, as they do at Guildhall at this day." He adds: "After the serjeants' feast ended they do still go to Paul's in their habits, and there choose their pillar whereat to hear their client's cause (if any come) in memory of that old custom."

Naturally, the Order of the Coif was jealous of its distinctions and privileges; and the following incident, for which we are indebted to the late Mr. Serjeant Ballantine, will serve to illustrate the point.

"I have now," he says, "taken my readers back to my old Inn. I will venture to surround it with all the halo to which it is entitled. We were, and had from time immemorial been, connected with the Corporation of the City of London, and inasmuch as the greatest compliment appreciated by that august body was annually paid to us, we were doubtless once upon a time of no small importance ourselves. We received an invitation to dine at the Lord Mayor's on November 9, and arrayed in robes that gave us as much claim to notice as men in armour, and preceded by a personage known as the City Marshal, we were assigned seats amongst the principal guests at that great festival, and it was really a sight worthy of notice. . . .

"Upon this occasion it was the office of one of the high officers of the Corporation, no less a

dignitary than the Common Serjeant,[1] personally to convey to us the invitation on the first day of Michaelmas term at our Inn. Sir Thomas Chambers, when he occupied this office, was accustomed to commit a most amusing blunder. Whether moved by some idea of his own dignity, or acting under civic instruction, I am unable to say, but when he came to perform his task, he addressed himself solely to the Judges, not even naming the Serjeants, although the former were asked only in that capacity, and were included with the Lord Chancellor and the Equity Judges specially in their official capacity; and invited by the Lord Mayor himself personally. The Common Serjeant was not, probably, aware that, whilst it in no respect derogated from his dignity to convey a message from one great corporation to another, he was performing the duty of a butler in conveying an invitation to individuals belonging to it.—There was a worthy member of our body, Mr. Serjeant Woolrych, who had written a most exhaustive book upon the sewers, and was very learned about City customs, and who exercised his mind greatly upon the blunder into which the Common Serjeant had tumbled, and wanted me, as Treasurer, to call attention to it. He considered that this was due not only to common humanity, but to our dignity. I was, however, deaf to his entreaties.—I do not remember dining upon more than one occasion in my official capacity. On this

[1] The Common Serjeant was for long to the City what the King's Serjeant was to the Crown. The appointment lay with the Court of Common Council, and till 1824 the custom was to elect the senior of the Common Pleaders in the Mayor's Court. He was originally rather an advocate than a judge. The office goes back at least as far as the commencement of the fourteenth century, being mentioned in the civic records of that date.

occasion the scarlet robes and heavy cumbrous wig, necessary to be worn, destroyed all possibility of enjoyment."

Serjeant Ballantine alludes to himself as Treasurer. He was the last to fill that office, and it fell to his lot, as such, to wind up the affairs of the ancient society, and so, in a sense, to perform its obsequies. The fiat had gone forth that no judge should be required henceforth to take or to have taken the degree of serjeant-at-law (36 and 37 Vict. c. 66 s. 8), and, as this was tantamount to the abolition of the order, it was resolved to sell the property of the Inn. The last meeting was held on April 27, 1877.

Many interesting particulars relating to the Order of the Coif are now in the possession of the reader, but he may still be conscious of difficulty as to the precise position of the Serjeant-at-law as touching the Crown, the public, and the profession. We have seen that serjeants were appointed in 1292 at the direct instance of the Crown. The King's Ancient Serjeant was the foremost man at the bar, and serjeants were joined in the commission with the judges "going circuit." From all this it may be concluded, not unnaturally, that serjeants-at-law laboured under severe restrictions in the exercise of their calling, and it might almost be taken for granted that they were not allowed to appear against the Crown. This was not the case—the Order of the Coif was essentially popular.

It will be instructive to compare the position of the Serjeant-at-law with that of the King's Counsel, since the two classes appear to compete, and there is likewise some risk of confusion. King's or Queen's Counsel date from the reign of Elizabeth, and the first creation was that of Francis Bacon.

Socially they had no distinctive rank—only precedence in court. They might not hold a brief against the Crown without a licence, which seems to have cost £1 5*s.* 6*d.* For a long time, however, this expedient was not available. A serjeant-at-law needed no licence in order to serve the King's enemies. The order enjoyed exclusive audience in the Court of Common Pleas, and, on the abolition of this privilege, a patent of precedence placed the existing members of the court on an equality with the Queen's Counsel. Ceremonially serjeants-at-law ranked next to knights.

Serjeant Ballantine traces the disappearance of the order first to the discountenance shown to it by the later Chancellors and their inconsistency with respect to patents of creation, and finally to the change whereby judges were relieved of the necessity of acceding to the rank. This agreeable writer, not unnaturally, regrets the loss of the institution, which, he says, possessed the great advantage "that a junior who had not seen much civil business, and who had practised principally at sessions, could, after seven years' standing, claim the appointment, and thus get a step intermediate to that of King's Counsel without sacrificing certain business that the latter was, by etiquette, bound to abandon."

The requirement of seven years' probation takes us back to the *apprenticii legis*, and from them again to the scholars of the Universities, where the same term was prescribed to be kept before magistration. The whole world, indeed, turned on the axle of apprenticeship.

JUDICIAL

CHAPTER XI

THE JUDGMENT OF GOD

ANCIENT judicial theory and practice comprehended not merely trials before a regular tribunal, in which the merits of a case were duly ascertained by the joint efforts of judge, counsel, and assize, but also an alternative method of arriving at the same result—namely, a solemn appeal to the bar of Almighty God. This reference was most common in criminal cases, but by no means restricted to them; resort was had to it in pleas respecting freehold, in writs of right, in warranty of land or of goods sold; debts upon mortgage or promise, denial of suretyship by sureties, validity of charters, manumission, questions concerning services, etc. All such quarrels might be submitted to the issue of the *duel*, which was pre-eminently the means of invoking the judgment of God. To us no proceeding appears less effectual or more cruel, but even so wise a man as Dante admitted the fairness of it.

Before treating of the duel it is expedient to deal with some Anglo-Saxon customs, which survived the Norman Conquest, and were founded on the same principle as the duel. The simplest of these processes was purgation by oath. Let us take the case of a person accused of theft. If he was a freeman

and had hitherto borne a good name, all that was necessary was that he should purge himself by his oath. Suppose, however, that he had been previously inculpated. In that case he had to clear himself with what was termed his twelfth hand—that is to say, twelve lawful men had to be nominated, who would swear to his innocence. Should they refuse, there was nothing for it but some form of the ordeal —a subject which will engage our attention presently. Meanwhile it may be pointed out that purgation by oath was itself a distinct appeal to the Almighty. It was believed that perjured persons incurred the danger of becoming dwarfs, or of their hands remaining attached to the Gospels or relics on which they swore. Persons guilty of this offence were compelled to purge themselves by the ordeal.

The system, resting on the sanctions of religion and honour, was not suited for general application, and there is no doubt that it was abused. Confining ourselves to University experience, the bad effects of the practice are exposed in a protest entered by Dr. Gascoigne in the Chancellor's Court-book at Oxford, wherein he cautions his successors to exercise the greatest care in admitting people to the privilege, and counsels them to withhold the name of the accuser from the accused. He states that cases have come under his notice in which individuals have not only perjured themselves, but in private have not blushed to acknowledge it ; and he shows very plainly the futility of the system by affirming that if a townsman objected to any one claiming compurgation, he ran a risk of being assaulted, maimed, and even murdered. The date of this entry is 1443. It may be added that the majority of the cases were those of incontinence ; and among other charges

mention is made of embezzlement and attachment of a new document to an old seal.

For details of procedure we may glance at the very full accounts preserved in the records of the City of London, where there were in operation three sorts or forms of compurgation, by which persons appealed, impleaded, and accused might obtain acquittal. The first was termed the Great Law, and had respect to murder and homicide. The second, the Middle Law, regarded the crime of mayhem, or corporal hurt, by which a man lost the use of any member that was or might be any defence to him in battle. The third law applied to insults, batteries, wounds, blows, torts, effusion of blood, and similar injuries inflicted at the season of the Nativity, the week of Pasque, and at Pentecost.

An accused person desiring to purge himself by the Great Law was required to observe the following order. He had to make an oath in his own person that he was innocent touching the felony and breach of the King's peace, and the entire crime laid to his charge—"So help me God and these hallows!" (*i.e.* the Gospels on which he was sworn). After that six men had to swear that, according to their privity and knowledge, he had made a sound oath. Then the accused repeated the oath, and was supported by the sworn testimony of six more witnesses. So it went on until thirty-six sworn men had testified in his favour.

With regard to the impanelling of this body it was the custom in London to choose one half of the number from the part of the City east of Walbrook, and the other half from the part west of Walbrook. They were to be of the liberty of the City, honourable men not kinsmen of the accused; and the selection was made

in his absence. He was then summoned, and the list of names having been read over to him, he might indicate to the Mayor and Aldermen any that he held suspect. If he produced reasonable grounds, the names were erased and others substituted for them. When, at length, he was content, he placed himself in the hands of this jury as regarded the purgation of the charge. The names of the thirty-six persons were delivered to the Justices of the King, before whom the accused had subsequently to appear and wage his law.

The same rules were observed in the case of the Middle Law, except that the accused had to make only three oaths and a panel of eighteen sufficed. In the Third Law the accused made no more than one oath and the panel was reduced to six. These were to be of his vicinage, but not bound to him by the tie whether of blood or marriage. Where a non-freeman was charged with homicide, forty-two compurgators were required, this disadvantage being due to the prejudice of the citizens against "foreigners," of which further evidence will be adduced later. On the other hand, if the prosecution were on the part of the Crown, seven compurgators were deemed enough, the reason being that the King had not the personal interest in bringing a criminal to justice of a private appellor.

The date of the election of the compurgators was fixed at the will of the Justices, and on that day fortnight the accused had to answer the appeal, unless the Justices chose to assign a longer term. That is, according to one statement. Another version sets forth that, by the law and liberty of the City, a term of forty days was given for answer to an appeal in a particular case; and this may mark the extreme

limit usual. Probably also it may be connected with the period during which a criminal was commonly allowed to avail himself of the right of sanctuary. If the accused did not appear on the day named for the trial, he was outlawed at the folk-moot. Meanwhile, he was delivered in bail to twelve men, provided that there was some surety sufficient for the payment of a hundred shillings in case they did not produce him at the appointed time. Any one appealed and attached for homicide could not demand "recognition" until he had acquitted himself of the appeal made against him; and meanwhile, if he could not find sureties, he was committed to prison. If the accused was outlawed and abjured the realm, the sureties were acquitted out of respect for the Church.

By the word "recognition" in the above description is apparently intended an inquisition into the circumstances by an assize or jury of twelve sworn men under the presidency of the Justices. In the case of an appeal—that is, where there was a private prosecutor, who was bound to have some interest in the matter, *e.g.* as a blood-relation—this was not allowed, and the onus of proving his innocence was thrown on the accused.

It was otherwise when a man was taxed with homicide by the voice of public fame. He was then attached either by pledges or by imprisonment; and the Justices held a very strict and careful inquisition into the case, as the result of which the accused might be wholly absolved, or he might be compelled to resort to compurgation. The compurgators, few or many, were at once judge, jury, and witnesses; and the final issue of the proceedings lay with them and the accused himself,

the Mayor and Aldermen making the preliminary arrangements and the King's Justices seeing that the forms were duly observed.

We saw at the outset that purgation by oath was a privilege only permitted to persons of good reputation, and that failure to secure the testimony of his neighbours to his innocence, where his reputation had been damaged, subjected a man to the judgment of water or fire. In Saxon times every freeman had his *borh* or surety, who presented him, if he was accused. Should he be *tyht bysig*, of evil repute, he was forced to undergo the triple ordeal without more ado; but if his lord gave him a good character and seven of his neighbours came forward and swore that oath had never failed him and that he had never paid *theof gyld* (fine for thieving), then he might make his election between a pound-worth oath or single ordeal. If the seven persons summoned declined to take the oath, the triple ordeal was inevitable, and if the guilt of the accused was established by this process, he had to restore to the accuser twofold, pay a fine to his lord, and find sureties that he would abstain from evil for the future. If he absconded and avoided the ordeal, the *borh* was obliged to pay the *ceap-gyld* or monetary value of the article stolen to the accuser and the fine to the lord. If the accused happened to be *theow man* (servant), and he failed in the ordeal, the law was that he should be branded the first time; the second time, there was no *bot*, or reparation, but the head! Finally, the appellor was obliged to swear by seven lawful men, who were to be named, that he had laid upon the accused the necessity of the ordeal neither from hatred nor from any other cause but that he might acquire his right.

There were various forms of ordeal. A man might be tried by fire or water, and there was a cold-water as well as a hot-water test. Moreover, the ordeal might be single or triple, according to the degree of immersion or the weight of the iron employed. The laws of Athelstan prescribe that in the hot-water ordeal, if single, the hand should dive after the stone up to the wrist; if triple, up to the elbow. Similarly, by the laws of King Edgar, the weight of the iron for the single ordeal was to be one pound, and for the triple ordeal three pounds.

The ordeal, being the Judgment of God, was distinctly a religious ceremony, and the whole of the proceedings were in the hands of the clergy. The three days following the accusation were spent in prayer and fasting, and the rite, varied according to the nature of the ordeal, was performed in a church.

THE JUDGMENT OF THE GLOWING IRON

The iron was placed before the altar, whence the priest, clad in full canonicals with the exception of the cope, removed it with a pair of tongs to the fire, singing as he did so the hymn of the Three Children, *Benedicite, Omnia Opera.* Over the place where the fire was he then recited the prayer: "Bless, O Lord God, this place, that there may be for us in it sanctity, chastity, virtue, and victory, and sanctimony, humility, goodness, gentleness, and plenitude of law, and obedience to God the Father, and the Son, and the Holy Ghost."[1]

[1] This and the other prayers cited are translated from the "Formulæ Liturgicæ," published by Gengler and Rozière, and included in Henderson's *Select Documents* (Bell).

We learn from the laws of Athelstan that no man was permitted to enter the church, after the fire had been borne in wherein the ordeal was to be heated, with the exception of the mass priest and the accused; and the latter had to measure with his feet nine feet from the stake to the mark. When the ordeal was ready two men were admitted on either side, who certified that the iron was of the required heat; and then an equal number of witnesses on either side having been summoned, were ranged along the church on each side of the ordeal. All were to be fasting and abstinent from their wives on the previous night. The mass priest then sprinkled them with holy water, let each of them taste the holy water, and gave them the book of the Gospels and the image of Christ's rood to kiss.

Whilst the iron was heating, the priest celebrated mass, and after he had taken the Eucharist, he adjured the person who was to be tried, and made him also take the Communion. From the time the hallowing was begun no one was allowed to mend the fire, but the iron rested on the hot embers until the last collect. It was then laid on the *stapula*, and the priest, having sprinkled holy water over it, recited the prayer: "The blessing of God the Father, the Son, and the Holy Ghost, descend upon this iron for the discerning of the right judgment of God." Meanwhile all were enjoined to observe complete silence "except that they earnestly pray to Almighty God that He make manifest what is soothest."

The accused then proceeded to the ordeal and carried the iron the measured distance—nine feet, divided into three equal parts, over which the person had to pass in as many steps regulated by signal.

His hand was thereupon enclosed in an envelope under seal, and so remained until the expiration of three days, when the envelope was removed and an examination took place to see whether the hand was foul or clean within. If festering blood was found in the track of the iron, the accused was judged to be guilty; if otherwise, he stood acquitted. An infraction of the rules not only rendered the ordeal void, but was punishable by a fine of 120 shillings.

The Judgment of the Ploughshares

Instead of carrying iron of a given weight a stipulated distance, an accused person might traverse barefoot a certain space in which nine hot ploughshares were laid lengthwise. To this species of judgment Queen Emma, mother of Edward the Confessor, is alleged to have submitted, when charged with adultery with Alwyn, Bishop of Winchester. The precise nature of this trial is more than usually obscure, and there is some reason for doubting whether Blackstone's account is accurate. He states that the accused person was blindfolded and that the ploughshares were placed at irregular intervals—evidently with the design that the person might escape contact with some of the irons: possibly all. Blackstone's authority, Rudborn, in his story of the trial of Queen Emma, conveys a totally different impression of the proceedings—at any rate, on that occasion. He says distinctly that she was *not* blindfolded, and that she pressed each ploughshare with the whole weight of her body: "Emma vero nullam mamphoram sive pannum ante oculos habens—super novem vomeres novem passus

faciens et singulos eorum totius corporis pleno pressens pondere."

On such occasions the following collect was in use:

"Lord God Omnipotent . . . we invoke Thee, and, as suppliants, exhort Thy majesty, that in this judgment and test Thou wilt order to be of no avail all the wiles of diabolical fraud and ingenuity, the incantations either of men or of women; also the properties of herbs; so that to all those standing around, it may be apparent that Thou art just and lovest justice, and that there is none who may resist Thy majesty. And so, O Lord, Ruler of the heavens and the earth, Creator of the waters, King of Thy whole creation, in Thy holy name and strength, we bless these ploughshares, that they may render a true judgment; so that, if it be so that that man is innocent of the charge in this matter which we are discussing and treating of amongst us, who walks over them with naked feet; Thou, O omnipotent God, as Thou didst deliver the three youths from the fiery furnace, and Susanna from the false charge, and Daniel from the den of lions—so that Thou mayest see fit, by Thy potent strength, to preserve the feet of the innocent safe and uninjured. If, moreover, that man be guilty in the aforesaid matter; and, the Devil persuading, shall have dared to tempt Thy power, and shall walk over them; do Thou, who art just and a Judge, make a manifest burn to appear on his feet, to Thy honour and praise and glory; to the constancy and confidence in Thy name, moreover, of us Thy servants; to the confusion and repentance of their sins of the perfidious and blind; so that, against their will, they may perceive, what willingly they would not—that Thou,

living and reigning from ages to ages, art the judge of the living and the dead. Amen."

The Judgment of the Boiling Water

When the ordeal was by boiling water, the priest first performed mass and then descended to the place of trial, bearing a cross and a book of the gospels. After he had chanted a litany, he exorcized and blessed the water, which was to be boiled. He then stripped the accused of his clothes and arrayed him in ecclesiastical vestments of the kind worn by an exorcist or a deacon; sprinkled some of the water over him, caused him to drink of it, and gave him the cross and the gospels to kiss. The priest having said, "I have given to thee this water for a sign to-day," wood was laid under the cauldron, which might be of iron, of brass, of lead or of clay. As the water grew warmer, prayers were recited by the priest, and it continued to be heated until it lowed to boiling. The accused then said the Lord's Prayer, and signed himself with the sign of the cross; and the cauldron having been quickly set down beside the fire, the judge held suspended in the water a stone, which the accused, in the Name of God, had to draw forth at the depth of his wrist or his elbow, according as the ordeal was single or triple. On the third day his hand was inspected, and his innocence or guilt determined.

The Judgment of Cold Water

The cold water ordeal is in some ways the most interesting of all. In this instance the accused was

thrown into a pond or tank, which was technically described as the *fossa* or "pit." If he floated, he was adjudged guilty; if he sank, his innocence was regarded as divinely proved. It is sometimes stated "if he floated without any appearance of swimming," but swimming appears to have been precluded if it be true that his thumbs were tied to his toes, or he was bound hand and foot! Grimm explains the principle of this test by tracing it to an old heathen superstition that the holy element, the pure stream, would receive no misdoer within it. King James I. in his *Demonologie*, however, lays it down in the case of witches that they having renounced their baptism, the element with which the holy rite is performed will justly reject them. This elucidation is in exact accord with the ancient formula of consecration pronounced over the accused, which was as follows:

"May omnipotent God, who did order baptism to be made by water, and did grant remission of sins to men through baptism; may He, through His mercy, decree a right judgment through that water. If, namely, thou art guilty in that matter, may the water which received thee in baptism not receive thee now; if, however, thou art innocent, may the water which received thee in baptism receive thee now. Through Christ our Lord."

The priest afterwards exorcized the water, saying to it:

"I adjure thee, water, in the name of the Father Almighty, who did create thee in the beginning, who also did order thee to be separated from the water above . . . . that in no manner thou receive this man, if he be in any way guilty of the charge brought against him; by deed, namely, or by consent,

or by knowledge, or in any way; but make him to swim above thee. And may no process be employed against thee, and no magic, which may be able to conceal that" [*i.e.* the circumstance of his guilt].

THE JUDGMENT OF THE MORSEL

A fifth form of the ordeal was the test of eating consecrated bread and cheese. This was known as the *corsned*, or morsel of execration. The priest wrote the Lord's Prayer on the bread, of which he then weighed out a certain quantity—ten penny-weights—and so likewise with the cheese. Under the right foot of the accused he set a cross of poplar wood, and holding another cross of the same material over the man's head, threw over his head the theft written on a tablet. He placed the bread and cheese at the same moment in the mouth of the accused, and, on doing so, recited the conjuration:

"I conjure thee, O man, by the Father and the Son and the Holy Ghost and by the four-and-twenty elders, who daily sound praises before God, and by the twelve patriarchs, the twelve prophets, the twelve apostles, the evangelists, martyrs, confessors and virgins, by all the saints and by our Redeemer, our Lord Jesus Christ, who for our salvation and for our sins did suffer His hands to be affixed to the cross; that if thou wast a partner in this theft or didst know of it, or hadst any fault, that bread and cheese may not pass thy gullet and throat, but that thou mayest tremble like an aspen-leaf, Amen; and not have rest, O man, until thou dost vomit it forth with blood, if thou hast committed

aught in the matter of the aforesaid theft. Through Him who liveth."

The following prayer and exorcism were also used and ordered to be repeated three times:

"Holy Father, omnipotent, eternal God, maker of all things visible, and of all things spiritual, who dost look into secret places, and dost know all things, who dost search the hearts of men, and dost rule as God, I pray Thee, hear the words of my prayer; that whoever has committed or carried out or consented to that theft, that bread and cheese may not be able to pass through his throat.

"I exorcize thee, most unclean dragon, ancient serpent, dark night, by the word of truth and the sign of light, by our Lord Jesus Christ, the immaculate Lamb generated by the Most High, conceived of the Holy Ghost, born of the Virgin Mary—Whose coming Gabriel the archangel did announce; Whom seeing, John did call out: This is the living and true Son of God—that in no wise mayest thou permit that man to eat this bread and cheese, who has committed this theft or consented to it or advised it. Adjured by Him who is to come to judge the quick and the dead, so thou close his throat with a band—not, however, unto death."

There is a tale that, in the reign of Edward the Confessor, Godwin, Earl of Kent, on being accused of the murder of the King's brother, appealed to this ordeal, and, the morsels lodging in his throat, was choked,[1] but it will be seen from the formula just quoted that the aim of this and similar proceedings was judgment, not punishment.

[1] Probably unhistorical; not a word of it in the Saxon Chronicle or "Florence of Worcester."

THE JUDGMENT OF THE PSALTER

Thieves were sometimes tried by means of two pieces of wood and a psalter. One of the pieces having a button on the top was inserted in the psalter above the verse: "Thou art just, O Lord, and righteous are Thy judgments." The book was then closed and pressed firm, and then the projecting button was placed in a hole made in the other piece of wood, from which the psalter now hung. The wood was held by two persons on opposite sides of the psalter, and the accused having been placed before them, one of them said thrice to the other: "He has the thing" (*i.e.* the stolen article). The other thrice answered: "He has it not." Thereupon the priest declared: "This He will deign to make manifest unto us, by whose judgment are ruled things terrestrial and things celestial. Thou art just, O Lord, and righteous are Thy judgments. Turn away the evils of Thy enemies, and destroy them with Thy truth."

The fate of the accused depended on the miraculous turning of the psalter. If the direction was from left to right, he was innocent; if from right to left, he was guilty. It would appear from the prayer, in which the priest invoked Divine revelation, that he held the book, and therefore it is natural to assume that, consciously or unconsciously, his opinion must have influenced its movement. The prayer ran:

"Omnipotent, everlasting God, who didst create all things from nothing, and didst form man from the clay of the earth, we pray Thee, as suppliants by the intercession of Mary the most holy Mother of God . . . . that Thou do make trial for us concerning this matter about which we are uncertain; so that if so

be that this man is guiltless, that book which we hold in our hands shall [in revolving] follow the ordinary course of the sun; but that if he be guilty that book shall move backwards."

There were other forms of procedure, in some of which, as in the trial of the cross and the touching of the bier, the supposed criminal was confronted with his victim. Ordeals were abolished in England in the year 1219; but the tradition did not die, and in the time of the Commonwealth Hopkins, the notorious witchfinder ridiculed in *Hudibras*, employed the cold-water ordeal for the conviction of witches. "The suspected person," says Sir Walter Scott, "was wrapped in a sheet, having the great toes and thumbs tied together, and so dragged through a pond or river. If she sank, it was received in favour of the accused; but if the body floated (which must have occurred ten times for once, if it was placed with care on the surface of the water) the accused was condemned."

That the issue of the ordeal might be arranged appears to have been recognized even in the Middle Ages. Thus, fifty Englishmen, it is said, having been ordered by William Rufus to be tried by the hot iron, every one of them escaped unhurt. Thereupon the King announced that he would try them again by the judgment of his court and not abide by the so-called judgment of God, "which was made favourable or unfavourable at any man's pleasure." By the Assize of Northampton (1176) suspected persons, who had been acquitted by the water ordeal, were liable to banishment, though again acquitted by the "judgment of God."

Trial by battle, though obviously based on the

same principle, was technically distinguished from the ordeal or judgment. The former appears to have arisen in the countries of the North, where it was known as the *holmgang*, the combats taking place on islands. Among the English this mode of settling differences was not much in favour either before or after the Norman Conquest; and the statutes of William I. contain provisions whereby the natives were permitted to substitute the more familiar ordeal for the trial by battle.

"It was also decreed there that if a Frenchman summon an Englishman for perjury or murder, theft, homicide, or 'ran'—as the English call evident rape, which cannot be denied—the Englishman shall defend himself as he prefers, either through the ordeal of iron or through wager of battle. But if the Englishman be infirm, he shall find another who will do it for him. If one of them shall be vanquished he shall pay a fine of forty shillings to the King. If an Englishman summon a Frenchman, and be unwilling to prove his charge by judgment or by wager of battle, I will, nevertheless, that the Frenchman purge himself by an informal oath."

In subsequent reigns wager of battle was infinitely more common, and great encouragement was given to it by the martial race, whose ideas and habits were imposed on the subject population. The principles were established and the procedure regulated by the *Assises de Jérusalem* (1099), whose ordinances were received and recognized throughout Europe as a code of law and honour. For a general statement of conditions and effects we cannot do better than turn to the pages of the almost impeccable Gibbon.

"The trial by battle," he says, "was established in all criminal cases which affected the life, or limb,

or honour, of any person; and in all civil transactions of or above the value of one mark of silver. It appears that in criminal cases the combat was the privilege of the accuser, who, except in the charge of treason, avenged his personal injury, or the death of those persons whom he had a right to represent; but wherever, from the nature of the charge, testimony could be obtained, it was necessary for him to produce witnesses of the fact. In civil causes the combat was not allowed as the means of establishing the claim of the demandant; but he was obliged to produce witnesses, who had, or assumed to have, knowledge of the fact. The combat was then the privilege of the defendant, because he charged the witness with an attempt by perjury to take away his right. He came therefore to be in the same position as the appellant in criminal cases. It was not, then, as a mode of proof that the combat was received, nor as making negative evidence (according to the supposition of Montesquieu), but in every case the right to offer battle was founded on the right to pursue by arms the redress of an injury; and the judicial combat was fought on the same principle, and with the same spirit, as a private duel. Champions were only allowed to women, and to men maimed or past the age of sixty. The consequence of a defeat was death to the person accused, or to the champion, or witness, as well as to the accuser himself; but in civil cases the demandant was punished with infamy and the loss of his suit, while his witness and champion suffered an ignominious death. In many cases it was the option of the judge to award or to refuse the combat; but two are specified in which it was the inevitable result of the challenge:

if a faithful vassal gave the lie to his compeer, who unjustly claimed any portion of their lord's demesnes; or if an unsuccessful suitor presumed to impeach the judgment and veracity of the court. He might impeach them, but the terms were severe and perilous: on the same day he successively fought *all* the members of the tribunal, even those who had been absent; a single defeat was followed by death and infamy; and where none could hope for victory it is highly probable that none would adventure the trial."

Second only in importance to the *Assises de Jérusalem* are the *Grand Coutumier de Normandie* and Beaumanoir's *Coutumes de Beauvoisis*. As regards England, the forms of procedure are narrated by Bracton and Britton; and Selden in his treatise *De Duellis* cites a number of cases, both civil and criminal, in which resort was had to trial by battle.

When an appellor offered to do battle in person, it was his duty to say: "Sir, A complains to you of B, who is there, that he has assassinated C; and if he deny it, A is ready to prove it with his person against the person of B, and to slay him or make him confess in the space of an hour, and here is his pledge." If he offered to do battle by a champion, the formula was: "Sir, A complains to you of B, that he has assassinated C; and if he deny it A is ready to prove it if he shall not bring his champion on the day; and to slay, etc., and see here his pledge." The defendant replied in the following terms: "Sir, B denies and contradicts the assassination imputed to him by A, and is ready to defend with his person against A's person; and see here his pledge."

The combatants were to be armed according to their quality; and the arms and armour of knights, who should do battle in a case of homicide or assassination, are duly set forth. They had to fight on foot; their lances were to be of equal length, and their shields half-a-foot higher than their persons, and pierced with two openings through which they could see their adversary. The arms had to be shown to the Court, and each champion was obliged to make oath on the Gospels that he had upon him neither writing, charm, nor any other arms than those shown to the Court. The combatants were then placed and fought. Near at hand stood the warders of the field, so that they might catch the words "I repent" in the event of their being uttered. In that case they said to the other party "You have done enough"; and he who had been vanquished was taken to the lord, by whose order he was trained to the gallows and hanged. Similar treatment was paid to a combatant who had been slain, even if he had not said "I repent." The same procedure was observed where the champions were of inferior rank, save that their arms were not knightly. If the case were not one of homicide or assassination, knights fought on horseback and in armour, with the same consequences to the vanquished. His arms were forfeited; and, if the charge were treason, his heirs were deprived of their inheritance. Combatants of lower than knightly rank fought on foot with shields and spears of equal length. If any one not a knight struck a knight, he lost his right hand, "because of the honour and dignity which a knight has, and ought to have, over all other kinds of persons."

We may now refer to some typical examples. In the reign of Henry III. Hamon le Stare was appealed for robbery by Walter de Bloweberme; and the record is specially interesting on account of a contemporary drawing of the fight and subsequent execution of the vanquished.

In a MS. of Merton College, Oxford, occurs a note of a case in the time of Edward I. R. de B. having demanded the advowson of a church against the Prior of Sens, the latter waged battle. On the appointed day his champion appeared, "and in the open field the duel was fought." The Prior's champion was struck down, and upon this the Prior's attorney came forward and surrendered the advowson. Accordingly, judgment was given that R. should recover seisin, and that the Prior should be in mercy. The same MS. contains a comment by the Judge (Saham) to the effect that if, after battle joined, at the second or third assault the tenant acknowledge the tenement to be the right of the demandant, and for that acknowledgment the demandant grant to the tenant that he shall hold of him for life, and that afterwards the tenement shall revert to him (the demandant), that acknowledgment is as stable as if a fine were levied in a writ of warranty of charter.

In Hil., 29 Edward III., a writ of right was brought by the Bishop of Salisbury against the Earl of Salisbury for the Castle of Salisbury. Battle was waged; but on the accoutrements of the champions being examined by the Justices, a further day was assigned on the ground that the coat of the Bishop's champion had been found to contain several rolls of prayers and charms. In this instance no battle took place, as a compromise

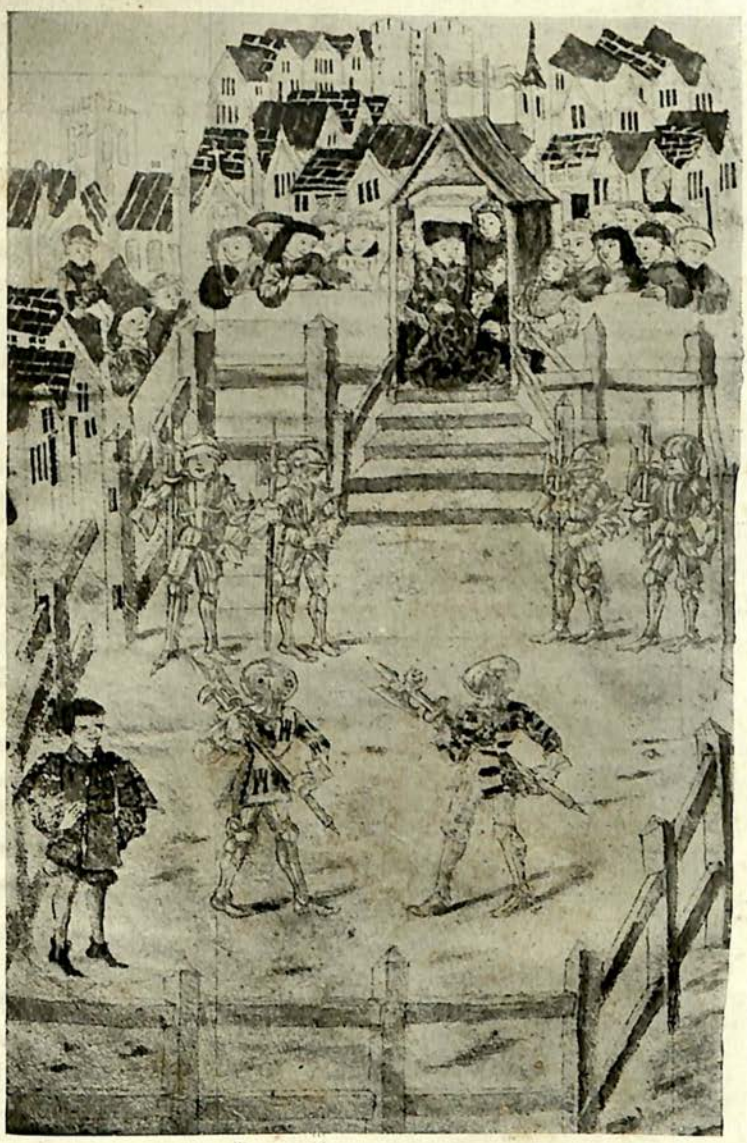
was arranged, whereby the Bishop was to pay the Earl 1500 marks, and judgment was given for the Bishop on the Earl making default. With regard to charms, it may be remarked that there is copied on the fly-leaf of a MS. volume of reports, *temp.* Edward I. and II., in a contemporary hand, a charm comprising a list of the names of God, to be recited only in special cases, one of which was "par doute de plai." We may add that ecclesiastics not unfrequently retained a champion not for one occasion, but permanently, and he was in receipt of regular pay. Richard de Swinfield, Bishop of Hereford, followed this course, giving a bond to Thomas de Bruges in consideration of the said Thomas performing the duties of champion. Similarly, by a deed dated London, April 28, 42 Henry III., one Henry de Fernbureg was engaged for the sum of 30 marks sterling to be always ready to fight as the Abbot of Glastonbury's champion in defence of the right which he had in the manors of Cranmore and Pucklechurch, against the Bishop of Bath and Wells, the Dean of Wells and other their champions whatsoever.

Naturally, however, the judicial combat was an institution in which the court and the aristocracy had a greater interest than the church. It has been suggested, with much probability, that the office of the King's Champion originated from this custom. In any case members of the royal house arranged, and even participated in, duels of this order; and one of the best accounts of the practice has been preserved in a long and elaborate epistle addressed to Richard II. by Thomas, Duke of Gloucester and Constable of England. The following are extracts:

"The King shall find the field for to fight in.

And the lists shall be lx paces of length and xl paces of breadth in good manner; and the earth be firm, stable, and hard, and even, made without great stones, and the earth be plat; and the lists strongly barred round about and a gate in the east and another in the west with good and strong barriers of vij foot of height or more. . . . The day of battle the King shall be in a sege or scaffold there where they shall be. . . . When the appellant cometh to his journey, he shall come to the gate of the lists in the east in such manner as he will fight with his arms and weapons assigned to him by the court, and there he shall abide till he be led in by the Constable, so that when he is comen to the said gate, the Constable and Marshal shall go thither. And the Constable shall ask him what man he is which is comen armed to the gate of the lists and what name he hath, and for what cause he is comen. And the appellant shall answer, 'I am such a man, A. de K., the appellant, the which is comen to this journey, &c., for to do, &c.' And then the Constable shall open the visor of his bassinet, so that he may plainly see his visage, and if it be the same man that is the appellant, then shall he make open the gates of the lists, and shall make him enter with the same arms, points, victuals and other lawful necessaries upon him, and also his counsel with him, and then he shall lead him afore the King, and then to his tent, where he shall abide till the defendant be comen. In the same manner it shall be done of the defendant save that he shall enter in at the west gate of the lists.

"The Constable's clerk shall write and set in the register the coming and the hour of entering of the appellant, and how he entered the lists on foot; and



A TRIAL BY COMBAT

(From "Archæologia," vol. LVII, pt. i)

also the harness of the appellant, and how he is armed and with how many weapons he entered the lists, and what victuals and other lawful necessaries he bringeth with him. In the same manner shall be done to the defendant. . . . And the appellant and defendant shall be searched by the Constable and Marshal of their points of arms, otherwise called weapons, that they be vowable without any manner of deceit ; and if they be other than reason asketh they shall be taken away, for reason, good faith, and law of arms will suffer no guile nor deceit in so great a deed. And it is to wit that the appellant and defendant may be armed upon their bodies as surely as they will."

Previously it had been said : " And the Constable shall make take heed that none other before or after the appellant or defendant bring more weapons nor victuals other than were assigned by the court." The " points " assigned by the court were the long sword, the short sword, and dagger—no other knife great or small or any other " instrument or engine of point." The combatants had each to swear on the mass-book that they were thus armed, and that they had no stone of virtue nor herb of virtue nor charm nor any other enchantment. Also they were made to take each other by the hand to do all their true power and intent on each other, and make their opponent either yield or give up the ghost. All but two lieutenants of the Constable and two knights were ordered to quit the lists.

The Constable sat in front of the King as his " Vicar general " and regulated the combat. " The Constable schall say w^{t} y^{e} voice as foloweth, 'Lessiez lez aler' ; that is to say, 'lat them goo and reste a while' ; 'lessiez lez aler & faire leur devoir depdieu' ;

that is to say, 'lat them goo and doo ther devour ī goddes name.' And this seyde eche man schal depte fro bothe pties soo that they may incountre & doo that them semeth best."

From that time forth neither appellant nor defendant might eat or drink without leave and licence of the King; and it was the Constable's duty, in case the King commanded the parties to separate, rest, or abide, for whatever reason, to see that this took place in such a way that they should be in the same "estate and degree," in case the King should order the resumption of the combat. He was also to have good "hearkening and sight," if either spoke to other of yielding or otherwise, for to him and to none other belonged the witness and the record of the words from that time forth.

In this battle, supposed to be on account of treason, he that was convicted and discomfited was disarmed in the lists by command of the Constable, and a corner of the lists broken "in reprove of him." Through this he was "drawen out by horse" through the lists from the place where he was disarmed to the place of justice, where he was beheaded or hanged—"the which thing appertaineth to the Marshal."

"And if it happen so that the King would take the quarrel in his hand and make them accorded without more fighting, then the Constable taking the one party and the Marshal the other shall lead them before the King, and he showing them his will, the said Constable and Marshal shall lead them to the one part of the lists with all their points and armour as they are found, and having when the King took the quarrel in his hand as is said. And so they shall be led out of the gate of the lists evenly, so that the one go not before the other by no way and nothing

for sen he hath taken the quarrel in his hand, it should be dishonest that either of the parties should have more disworship than the other. Wherefore it hath been said by many ancient men that he that goeth first out of the lists hath the disworship and this as well in cause of treason as in other cause whatsoever it be."

It cannot be repeated too often or too clearly understood that the duel was not exclusively a chivalrous custom, confined to those of high station. Like the ordeal, it was prescribed, as a mode of juridical determination, for burgesses and others, though, as we have shown, equality of rank was postulated in the combatants no less than equality of "points." By way of illustration we may turn to the annals of Leicester, where wager of battle was enforced on the townsmen for the settlement of their disputes. We have seen that knights undertook to bring matters to a conclusion within the space of one hour. Honest burgesses, less expert in the use of lethal weapons, and either less courageous or less callous in taking human life, appear to have shown extremely poor "sport" in their involuntary matches. At Leicester a combat is recorded to have commenced at 6 a.m. and continued till 3 p.m., when it was terminated through one of the parties falling into a pit. The character of the affair and the behaviour of the champions occasioned a great scandal; and the townsmen, in order to prevent a repetition of the incident, engaged to pay the Earl their lord three pence for each house, on condition that the "twenty-four jurors who were in Leicester from ancient times should from that time forward discuss and decide all pleas they might have among themselves."

In London and other chartered towns parties to a quarrel could not be made to fight against their will. The rule was that wager of battle did not lie between two freemen without the consent of both; and a case is on record in which one citizen, having been charged with felony and robbery, offered to defend himself with his body. The appellor declined dereignment by battle, and so it was decided that the accused should be tried by the Middle Law, with eighteen compurgators.

The duel was employed for the determination not only of criminal, but of civil causes, and in such controversies the demandant, whatever his condition, might not engage in the combat himself, but was represented by a champion, who occupied the position of a witness. The claim would be made in some such form as the following:

"I demand against B. one hide of land in such a vill (naming it) as my right and inheritance, of which my father (or grandfather, as it might be) was seised in his demesne as of fee, in the time of Henry I. (or, after the first coronation of the King, as it might be), and from which he received produce to the value of fifty shillings at least (as in corn, hay, and other produce); and this I am ready to prove by my freeman John, or if anything should happen to him, by him or him"—several might be named, though only one might wage battle—"who saw this."

Or the form might conclude: "And this I am ready to prove by my freeman John, whom his father on his death-bed enjoined, by the faith a son owes his father, that if he ever heard of any plea being moved concerning this land, he would dereign (or prove) this, as what his father had seen or heard."

The tenant might then defend himself in person or by deputy at his option. The demandant's champion was not to be a person hired for reward, and if he was convicted of receiving money or vanquished in a duel on the point of right, not only did the demandant lose his suit, but the champion forfeited his *legem terræ*—that is, he could never act in a similar capacity again—and was fined sixty shillings *nomine recreantisæ*—for cowardice. In the reign of Henry II. these arrangements were modified, and the tenant might put himself on the assise. "The assise," says Glanville, "is a royal benefit conferred on the nation by the prince in his clemency, by the advice of his nobles, as an expedient whereby the lives and interests of his subjects might be preserved, and their property and rights enjoyed, without being any longer obliged to submit to the doubtful chance of the duel. After this the calamity of a violent death, which sometimes happened to champions, might be avoided, as well as the perpetual infamy and disgrace attendant on the vanquished, when he had pronounced the *infestum et inverecundum verbum*." The horrible word was "creaunt" (or craven).

An example of a man "crying creaunt" occurs in the annals of Colchester; but, before referring to this, it will be well to state the custom regarding approvers as stated in the *Dialogus de Scaccario*. If a notorious evil-doer was taken by the King's servants, he was allowed, on confessing his crime, to challenge his accomplice or accomplices to a duel, in order to prove their guilt. In this way he might escape hanging, but, nevertheless, did not go unpunished, since he had either to depart the realm and never return, or suffer the penalty of

mutilation, thus becoming "a miserable spectacle among the people."

In the 'Red Paper Book of the Borough of Colchester there is an account of a trial by combat in the castle bailey by royal commission. John Bokenham of Stanstede had been accused by John Huberd of Halstede of complicity in a number of robberies and homicides in which both had been concerned. Bokenham denied the charge, and the Sheriff of Essex was ordered to keep them both in custody and provide such arms and clothing as were usual in the circumstances of a legal battle. When the day arrived for the duel, the parties were produced before the justices of Colchester in their leather dress and with horn-pointed staves and targets in their hands. After a prolonged fight the accused was vanquished, and confessed his guilt by crying "Criaunt, criaunt!" The record concludes: "And the self-same day the said accused was hanged, and the said approver was led again into the aforesaid castle."

JUDICIAL

CHAPTER XII

OUTLAWRY

MANY of our ancient ballads and lyrics, such as the cycle of Robin Hood and that exquisite love-poem "The Nut-Brown Maid," are based on the custom of outlawry. One of the most charming of these early English productions is "The Tale of Gamelyn," in which we meet with the following passage alluding to the ban:

"Tho were his bonde-men sory and nothing glad,
When Gamelyn her lord wolues heed was cried and maad;
And sente out of his men, wher they might him fynde,
For to seke Gamelyn vnder woode-lynde,
To telle him tydinges, how the wynd was went,
And al his good reued, and alle his men schent."

The expression "wolf's head" was an old Saxon formula of outlawry, and appears to have originated from the circumstance that a price was set on the fugitive equivalent to that at which a wolf's head was estimated. One of the laws of Edward the Confessor deals with the case of a person who has fled justice, and pronounces: "Si postea repertus fuerit et teneri possit, vivus regi reddatur, vel caput ipsius si se defenderit; lupinum enim caput geret a die utlagacionis sue, quod ab Anglis *wlvesheved*

nominatur. Et hec sententia communis est de omnibus utlagis."

Already we are in possession of the salient facts as regards outlawry. As a rule the outlaw was not banished, as citizens were ostracized at Athens, to secure the State from dangerous rivalries. In other words, they were commonly not men of character and distinction, but just the reverse—persons whose conduct was so destitute of honour as to degrade them, in the eyes of the community, to the level of the worst sort of vermin. And they were treated accordingly. They were held to be unfit to exist as an integral part of the body politic, and either destroyed or, as an alternative, constrained to abjure the realm. The head and front of their offence was not any act of which they might have been guilty. The direct, and, it may be said, the sole cause of their proscription was refusal to submit to the laws, to accept justice at the hands of their countrymen.

This comes out quite distinctly in the legislative enactments of our remote ancestors. Kemble in his *Saxons in England* quotes the following law of King Edgar:

"That a thief be pursued, if necessary. If there be present need, let it be told the hundred men, and let them afterwards make it known to the tithing men and let them all go forth whither God may direct them to their end; let them all do justice on the thief as it was formerly Eadmund's law. And be the *ceapgild* (*i.e.* market value) paid to him that owns the chattel; and be the rest divided in two, half to the hundred, half to the lord except men; and let the lord take possession of the men.

"And if any neglect this and deny the judgment of the hundred, and the same be afterwards proved

against him, let him pay to the hundred 30 pence; and the second time 60 pence; half to the hundred, half to the lord. If he do it a third time, let him pay ½ lb; the 4th time let him lose all that he hath and be an outlaw, unless the King will allow him to remain in the land. . . .

"We have also ordained that if the hundred pursue a track into another hundred, notice be given to the hundred elder, and that he go with them. If he fail to do so let him pay £30 to the King. . . .

"If any one flinch from justice and escape, let him that hath him in custody pay damages (*angild*). And if he be accused of having aided the escape, let him clear himself according to the law of the country."

Angild is defined by Maitland as the money compensation which the person who has been wronged is entitled to receive—*i.e.* damage as distinct from the fine (*wite*). Here, it is evident, we are on the same ground as in the chapter treating of purgation by oath and the ordeal. When we recollect that the thief had to face the pain and uncertain issue of an ordeal, and that conviction might involve, *in addition to the fine*, banishment, slavery, or the loss of a foot, we see at once the temptation to abscond, but the disappearance of the accused was not only prejudicial to the accuser, but compromised the person who was responsible for his production. The escaped thief, therefore, was a *nuisance*, as well as a danger, and, if he remained contumacious, forfeiture of life and property was deemed not too heavy a penalty. If, instead of being a thief, the felon chanced to be a murderer, the inconvenience to the community, in whose midst the crime had been perpetrated, was still greater. One of the laws of

Edward the Confessor ordained that if a man were found slain and the slayer could not be found, a fine of 46 marks (£30 13*s.* 4*d.*) was to be paid into the Treasury by the township and hundred. The Pipe Rolls contain many instances of payments for murders of which the doers were not taken red-handed, the fines varying in amount. In 14 Henry II. the Sheriff of Devon accounted for 100*s.* for one murder in Wonford Hundred, 10 marks for several murders in Axminster Hundred, and 20*s.* for a murder in North Tawton Hundred. Another sum of 20*s.* was remitted by the village or township of Braunton for peace in respect of a murder committed there.[1]

The position of affairs is thus clear. The murderer was regarded as a member of a corporation, which had to answer for him, and, failing to do so, was liable to a forfeit. The manslayer, therefore, if

[1] The *Dialogus de Scaccario* contains the following legendary account of the origin of this custom, which, like so many others, was an Anglo-Saxon usage continued under the Normans:

"Now in the primitive state of the kingdom after the Conquest those who were left of the Anglo-Saxon subjects secretly laid ambushes for the suspected and hated race of the Normans, and here and there, when opportunity offered, killed them secretly in the woods and in remote places: as vengeance for whom—when the Kings and their ministers had for some years with exquisite kinds of tortures, raged against the Anglo-Saxons; and they, nevertheless, had not, in consequence of these measures, altogether desisted—the following plan was hit upon: that the so-called "hundred," in which a Norman was found killed in this way—when he who had caused his death was not to be found, and it did not appear from his flight who he was—should be condemned to a large sum of tested silver for the fisc; some indeed to *l.*36, some to *l.*44, according to the different localities, and the frequency of the slaying.

"And they say that this is done with the following end in view, namely, that a general penalty of this kind might make it safe for the passers-by, and that each person might hasten to punish so great a crime and to give up to justice him through whom so enormous a loss fell on the whole neighbourhood."—Henderson's *Select Documents*, p. 66.

he did not make his surrender, added to his original offence against an individual or family those of disloyalty and injury to a community; and, accordingly, he became the mark of private or public vengeance, the laws which he had violated and contemned ceasing to afford him protection.

In these circumstances, what was he to do? To judge from the testimony of the ballads and poems before mentioned, his best and usual course was to wend his way to the greenwood and join himself to a band of jovial companions who found themselves in a similar plight to his own. That this course was sometimes adopted is a fair inference from the very existence of these compositions, and is rendered probable by the vast extent of the forests and the sparseness of the population, which these desperadoes might conciliate with a share of the ransom extorted from rich wayfarers. But a homicide who flew to this remedy was not very safe. As an enemy of the established order, he had to perform prodigies of valour, and, once captured, his fate was sealed. Outlaws of this description can hardly have been common, even in the days of Hereward the Wake. The majority of those who came under this denomination were not heroes, and acted quite differently. They threw themselves on the protection of the Church.

"Holy Mother Church, as a kind mother, gathers all into her bosom; and thus each and all, good and bad, who take refuge with her, are protected unhurt under her mantle."

Such was the language of the Synod of Exeter in 1287; and the statutes go on to quote from the provisions of the Legatine Council held under Cardinal Othobon at St. Paul's, London, twenty-one

years before, which were the basis of the constitutions adopted in the various dioceses: "If any one shall drag out from the church or cemetery or cloister the person that has taken refuge there, or prevent his being supplied with necessary food; or shall in a hostile or violent manner carry off property deposited in the aforesaid places, or cause or approve of such carrying off by their followers, or lend their assistance, openly or secretly, to such things being done by those presuming on their aid, counsel, or consent —we bind them *ipso facto* by the bond of excommunication, from which they shall not be absolved until they have made full compensation to the Church for the wrong suffered."

Hence it is clear that the malefactor had a ready way of evading or postponing the consequences of his crime and refusal to "put himself on his country," for every church was a sanctuary in the sense of affording security to terrified wretches, innocent or guilty. It may be well to recall that outlawry did not date from the commission of the crime or the flight of the criminal; and up to the time of conviction, judgment going by default, the law gave no countenance to his assassination. The rule affirmed by the statute of King Edgar, whereby sentence of outlawry was pronounced only after opportunities had been granted for repentance, continued to be in force all through the Middle Ages. This appears from a note on the proceedings of the Salop Iter of 1293, which states:

"Although one who is appealed of the death of a man, or for other felony, make default at three County Courts, yet at the fourth County Court he may appear, and give mainprize to appear at the fifth County Court; and then, if he do not come,

he will be outlawed. And if the appellor abandon the prosecution, the exigend shall tarry until the Eyre; and then he shall be tried (for he may return to the peace if he will) at the suit of the King. And if he will not come, he shall be called at the three County Courts; and if he do not come at the third, he shall be outlawed at the fourth County Court, if he do not come and give mainprize to come at the fifth County Court."

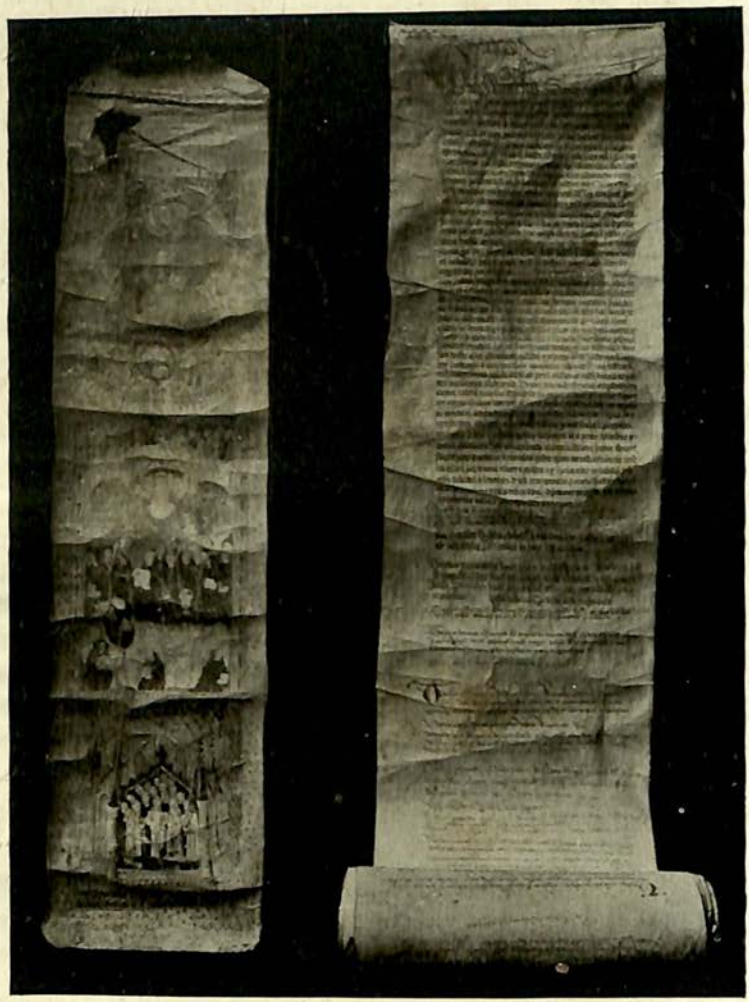
It may be taken for granted that, in the vast majority of instances, this degree of consideration sufficed in the case of any person honestly desiring to take his trial; but circumstances might exist which rendered it impossible for a man to prevent his being outlawed, and then the right of sanctuary might be of the utmost value in staying injustice. That the supposition is not purely imaginary, is proved by a remarkable petition of the early part of the reign of Edward I., in which John Brown, scholar of Oxford, states that during his absence at Rome he has been falsely appealed by a Jewess for a Christian child, pursued from county to county, and outlawed; wherefore on his return he was put in prison and he now prays the King's mercy, without which he cannot go to the common law. John Brown, it is clear, did not take sanctuary—probably because he was not apprised of the facts in time; otherwise it would have afforded him all needful security and allowed him a period for reflection as to the wisdom of surrendering or quitting the realm.

The right of sanctuary must have been founded on the principle that the guilt of the fugitive had not been established. Even the ordinary law was laudably sensitive on this point, and care was taken not to prejudice the accused by an apparent assump-

tion of guilt. If a person was charged with murder, the bailiffs were obliged to approach him with white wands as a sign that they had no intention of committing or provoking a breach of the peace. They then summoned him to yield himself to the peace of "our lord the King." If they came in the first instance armed in a warlike manner with swords, etc., it was lawful for him to defend himself, and there is one instance on record in which a man did this, fighting a pitched battle with the bailiffs in the garden of his inn, and being afterwards upheld by the court. If, however, the person would not surrender, when summoned in a peaceable way, force might be employed against him. But the officers had first to find or overtake him; and in this they might be anticipated by those who had suffered injury. Obviously, therefore, the homicide, who had no confidence in the justice of his case, would be well advised in flying without delay to "the bosom of Mother Church."

The refugee was as often as not an habitual criminal, who might have broken out of prison on the eve of execution. Some light on this point is derived from the Northumberland Assize Rolls of the years 1256 and 1279. For instance: "Robertus de Cregling et Jacobus le Escoe', duo extranei, capti fuerunt pro suspicione latrocinii per ballivos Willelmi de Valencia et imprisonati in prisona ejusdem Willelmi apud Rowebyr' (Rothbury). Et predictus Robertus postea evasit de prisona ad ecclesiam de Rowebyr' et cognovit ibi latrocinium et abjuravit regnum coram Willelmo de Baumburg tunc coronatore."

Offenders were obliged to state the nature of the crimes alleged against them, and the Durham register shows that by far the largest number were murderers



THE DURHAM MORTUARY ROLL

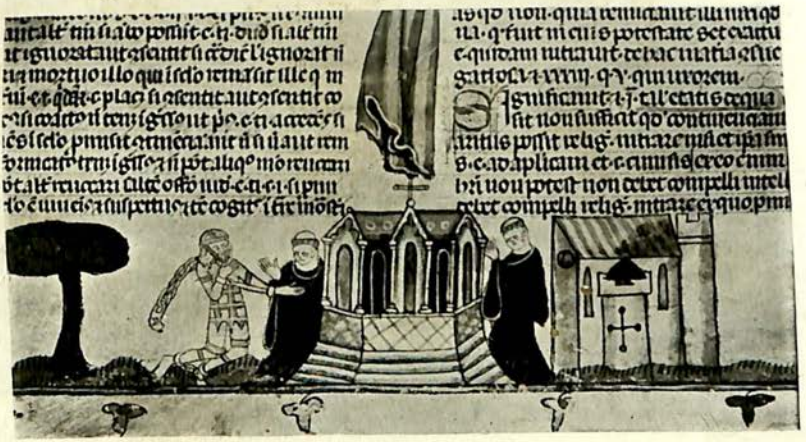
and homicides. Some claimed the rights of sanctuary for debt, some for stealing horses or cattle and burglary; and others for such crimes as rape, theft, harbouring a thief, escaping from prison, failing to prosecute, and being backward in their accounts. Townships which failed to arrest the criminal before he reached the church, or allowed him to escape after he had taken refuge in it, were fined by the King's Justices, the circumstances proving that the institution was tolerated as a necessary evil by those responsible for the maintenance of law and order—not regarded with favour.

The Thucydidean speech of the Duke of Buckingham on the removal of the Queen of Edward IV., with her younger son, the Duke of York, to the sanctuary of Westminster in 1483, furnishes a searching criticism of the use and abuse of this privilege in the practice of the fifteenth century. Addressing the Privy Council, he is represented to have said:

"And yet will I break no sanctuary; therefore, verily, since the privileges of that place and other like have been of long continued, I am not he that will go about to break them; and in good faith, if they were now to begin, I would not be he that should go about to make them. Yet will I not say nay, but that it is a deed of pity that such men as the sea or their evil debtors have brought in poverty should have some place of liberty to keep their bodies out of the danger of their cruel creditors; and also if the crown happen (as it hath done) to come in question, while either part taketh other for traitors, I like well there be some place of refuge for both. But as for thieves, of which these places be full, and which never fall from the craft after they once fall thereunto, it is

a pity that Sanctuary should screen them, and much more man-quellors, whom God bade to take from the altar and kill them, if their murder were wilful; and where it is otherwise there need we not the sanctuaries that God appointed in the old law. For if either necessity, his own defence or misfortune draweth him to that deed, a pardon serveth, which either the law granteth of course, or the King of pity. Then look we now how few Sanctuary men there be whom any favourable necessity compel to go thither; and then see, on the other side, what a sort there be commonly therein of them whom wilful unthriftiness have brought to nought. What rabble of thieves, murderers, and malicious heinous traitors, and that in two places especially; the one the elbow of the city [that of Westminster] and the other [St. Martin's-le-Grand] in the very bowels. I dare well avow it, weigh the good they do with the hurt that cometh of them, and ye shall find it much better to lack both than to have both; and this I say, although they were not abused as they now be, and so long have been that I fear me ever they will be, while men be afraid to set their hands to amend them; as though God and St. Peter were the patrons of ungracious living. Now, unthrifts riot and run in debt upon the boldness of these places; yea, and rich men run thither with poor men's goods. There they build, there they spend, and bid their creditors go whistle. Men's wives run thither with their husbands' plate, and say they dare not abide with their husbands for beating. Thieves bring thither their stolen goods, and live thereon riotously; there they devise new robberies, and nightly they steal out, they rob and rive, kill and come in

HUBERT DE BURGH IN SANCTUARY
(From MS. Royal 14 C. vii 119)



TAKING SANCTUARY
(From MS. Royal 10 Æ iv f. 206b)

again, as though those places give them not only a safeguard for the harm they have done, but a licence also to do more."

There is one aspect of the privilege, not mentioned in this balanced judgment, which deserves consideration, and that is the inadequacy of the law to assure victims of injustice against oppression. As an instance of the sort which, it may be hoped, was not too common, we may take the following (undated) petition:

"Margery, who was the wife of Thomas Tany, late *chivaler* of the College of Windsor, & is Executrix of his last will and testament, pleads that whereas on the Thursday . . . . in the Feast of Corpus Christi in the late insurrection proclamation was made that all who had any right or title to recover any debts or bequests whatsoever should come before the King at the Tower of London and shew their evidence, &c., without delay, she, the s'd Margery, and her eldest son John Thorpe, came with a bill to present to the King for recovery of debts due to her by force of the will & test. of her s'd baron & of the judgments given & rendered by three Chancellors of the King; and they had not leisure to present the bill then, but on the morrow, Saturday, delivered the s'd bill to the King in his Wardrobe in London. But forasmuch as the Father in God, the Archb'p of Canterbury, then Chancellor of England and Judge in this . . . . , had sequestrated all the goods and chattels of Sir William Mugge, then Dean of the said College, escheated into the hands of Walter Almaly, present Dean of the s'd College, commanding by letters patent the s'd Walter, under certain penalties, that no livery should be made until satisfaction had

been done to the s'd Margery for the debts due from the said W^m^ to the said M. by the said test., and that John de Thorp, younger son of the s'd Marg^t^, had received a mandate from the s'd Chancellor to summon the s'd Walter and Sir Richard Metford to appear & answer before the Chancellor, the s'd Sir Walter caused the s'd John Thorp, eldest son of the s'd Margery, to be arrested and kept him in prison for three days, wrongfully and in contempt of the King . . . . . and besides this the s'd Sir Walter caused the s'd John de Thorp, younger son of the s'd M., to be arrested in Suthwerk by John Chirche, serjeant of London; and while he was under arrest the s'd Walter, of malice prepense, assaulted him, beating him on the head and other parts of the body, which beating & punishment of the body caused his death in the prison of Newgate; where, though he offered repeatedly to find as sureties good and sufficient men of the City of London to offer themselves before the Mayor & Sheriffs of London, to wit, the then mayor, William Walleworth, to be responsible for him, body for body, yet was he not delivered out of prison until he was dead, and moreover the s'd Walter threatened to destroy the s'd Margery as he had destroyed her son, so that she *took sanctuary* and dared not issue forth for fear of death, etc."

It has been stated that all churches, parochial, collegiate, and cathedral, were sanctuaries; but there were in different parts of England about thirty supreme sanctuaries, of which Westminster, York, Durham, Glastonbury, Ely, Ripon, and Beverley may be taken as types. They owed this pre-eminence to the possession of relics and stories of miracles

wrought by the tutelar saint for the protection of suppliants or the chastisement of those who violated the shrine. The origin of the civil sanction is most obscure. Individual churches attributed their franchise to the favour of ancient kings—Hexham to Ecfrith, King of Northumbria; Ripon and Beverley to Athelstan, and York to Edward the Confessor. Tradition affirms that in primitive times the term of protection at Durham was thirty-seven days and at Beverley thirty days on the first and second occasions, and if the fugitive resorted thither a third time, he had to become *serviens ecclesiæ imperpetuum*. These intimations, if true, point to a process of evolution from small beginnings represented by the three nights' protection to which the sanctuary rights of an ordinary church were limited by the laws of Alfred (887) to the extraordinary privileges which, if we accept Mr. R. H. Forster's conclusions, existed at Durham.

These concerned both the area and the duration of the immunity. At other places the right of sanctuary comprised the precinct as well as the church itself. For instance, at Beverley, the story goes that Athelstan, on his return from a victorious campaign against King Constantine, conferred the privilege on the church of St. John and a portion of the surrounding country. The bounds were indicated by crosses. The base and part of the shaft of one of them is, or was lately, to be seen in a hedge on the road to Skidby. Others were erected at Molescroft, on the road towards Cherry or North Burton, and near Killingwoldgrove, on the Bishop's Burton road. At Durham, however, if we follow Mr. Forster—and he makes out an excellent case—the precinct included the whole of the County

Palatine, and the term of protection, instead of being confined to the ordinary period of forty days, was perpetual. At York, Beverley, and Hexham there was what may be termed an outermost precinct and various inner precincts, the relative sanctity of which is shown by the scale of punishments inflicted for violation. In Prior Richard's history of Hexham, it is stated that there were at that place four crosses, each of them erected at a distance of one mile from the church, and in a different direction. Any one who arrested a fugitive within these limits was fined two *hundreth* or sixteen pounds. For an arrest "infra villam" the penalty was twofold. If the person were seized "infra muros atrii ecclesiæ," it was threefold; and, if within the church itself, sixfold, to which was added penance "sicut de sacrilegiis." Supposing, however, that any one, "vesano spiritu agitatus diabolico ausu quemquam capere præsumpserit in cathedra lapidea juxta altare quam Angli vocant *fridstol*, id est, cathedram quietudinis vel pacis, vel etiam ad feretrum sanctarum reliquiarum quod est post altare,"—then the crime was *botolos* (without remedy); no monetary payment could be received as compensation. When Leland was at Beverley, he was shown a frithstool, on which he made the following note: "Hæc sedes lapidea Freedstool dicitur, *i.e.* Pacis Cathedra, ad quam reus perveniens omnimodam habet securitatem." There was a frithstool endowed with similar privileges at York Minster, and another at Durham. Stone seats claimed to be frithstools are still shown at Hexham and Beverley.

Of all the localities which drew to themselves especial distinction as sanctuaries, none rivals in antiquarian interest the monastery of Durham.

This is because of the existence of an ancient work on the *Rites of Durham*, which enters in considerable detail into the ceremonial observed on such occasions, and was received for a long time as authoritative. Recent criticism by Mr. R. H. Forster has rather impaired the credibility of the document. He points out that its professed date is 1593 or more than fifty years after the dissolution of the Priory; and maintains that it is not a first-hand chronicle of events of "the floryshinge tyme" before the suppression of the house, but a compilation based partly on old records and partly on the reminiscences of aged residents.

Nevertheless the narrative must be considered to possess a high degree of historical value, and is undeniably picturesque. We catch a glimpse of the fugitive "knocking and rapping" at the grim twelfth-century knocker "to have yt opened." We see him "letten in" by "certen men that did lie alwaies in two chambers over the said north church door," and running straightway to the Galilee bell and tolling it. ("In the weste end in the north allie and over the Galleley dour there, in a belfray called the Galleley Steple, did hing iiii goodly great bells.") The work goes on to state that "when the Prior had intelligence thereof, then he dyd send word and command them that they should keape themselves within the sanctuary, that is to saie, within the Church and Churchyard." This was until the official of the convent and witnesses had assembled for the formal admission and registration of the fugitive, which took place in the nave, in the Sacrist's exchequer, which was in the north aisle of the choir or "in domo registrali." The official who presided over the ceremony was commonly

the Sacrist, but the duty was sometimes performed by the Chancellor of the Cathedral, the Sub-Prior, or a monk qualified as a notary public. As for the witnesses, they might be monks, servants of the convent, clerks, masons employed on the fabric, or they might be friends of the fugitive who had attended him to Durham as a body-guard. Frequently, however, they were casual onlookers or persons who had flocked out of curiosity to the "show."

On admission, the "grithman" received a gown of black cloth "maid with a cross of yeallowe cloth called St. Cuthbert's Cross, sett on the lefte shoulder of the arme" and was permitted to lie "within the church or saunctuary in a grate . . . standing and adjoining unto the Galilei dore on the south side," and "had meite, cost and charge for 37 days." The writer of the book alleges that maintenance was found for fugitives "unto such tyme as the prior and convent could gett them conveyed out of the dioces," but Mr. Forster traverses this statement and adduces documentary evidence to show that, in various instances, "grithmen" were permanently domiciled in the diocese. We have, however, an account of one such "conveyance." A certain Coleon de Wolsyngham, in the year 1487, on retiring from the church, was delivered by the Sheriff to the nearest constables, and after that by constables to constables, that he might be conducted to the nearest sea-port, there to take shipping and never return. He is stated to have received a white cross made of wood.

Bracton and Britton both state that the criminal could elect his own port, but we generally hear of a port being assigned him by the Coroner, and he was required to proceed thither without deviating.

A case is on record where "one A had abjured the King's realm and went a little out of the highway; the menee was raised upon him, and he was taken in the highway, and this was found by the jury." Nobody was suffered to molest the felon on his journey seawards on pain of forfeiting goods and chattels. This part of our subject receives excellent illustration from the customary of the Cinque Ports:

"And when any shall flee into the church or churchyard for felony, claiming thereof the privilege for any action of his life, the head officer of the same liberty, where the said church or churchyard is, with his fellow jurats or coroners of the said liberty, shall come to him and shall ask him the cause of his being there, and if he will not confess felony, he shall be had out of the said sanctuary; and if he will confess felony immediately, it shall be entered in record, and his goods and chattels shall be forfeited, and he shall tarry there forty days—or before, if he will, he shall make his abjuration in form following before the head officer, who shall assign to him the port of his passage, and after his abjuration there shall be delivered unto him by the head officer, or his assignees, a cross, and proclamation shall be made that while he be going by the highway towards the port to him assigned, he shall go in the King's peace, and that no man shall grieve him in so doing on pain to forfeit his goods and chattels; and the said felon shall lay his right hand on the book and swear thus:

"'You hear, Mr. Coroner, that I, A. B., a thief, have stolen such a thing, or have killed such a woman, or man, or a child, and am the King's felon; and for that I have done many evil deeds and felonies in this same his land, I do abjure and

forswear the lands of the Kings of England, and that I shall haste myself to the port of Dover, which you have given or assigned me; and that I shall not go out of the highway; and if I do, I will that I shall be taken as a thief and the King's felon; and that at the same place I shall tarry but one ebb and flood if I may have passage; and, if I cannot have passage in the same place, I shall go every day into the sea to my knees, and above, crying, "Passage for the love of God and King N. his sake"; and if I may not within forty days together, I shall get me again into the church as the King's felon. So God me help, and by this book, according to your judgment.'

"And if a clerk, flying to the church for felony, affirming himself to be a clerk, he shall not abjure the realm, but yielding himself to the laws of the realm, shall enjoy the liberties of the church, and shall be delivered to the ordinary, to be safe kept in the convict prison, according to the laudable custom of the realm of England."

When it became known that a malefactor had taken refuge in a church it was the duty of the authorities to *beset* the place, and send for the coroner, who parleyed with the person in the manner described in the above recital. From the same account it will be gleaned that the maximum limit allotted to the refugee was ordinarily forty days, after which he would cease to receive sustenance. According to Britton he had forty days after being summoned by the coroner. It will be further observed that the criminal undertook to "hasten" to the port of departure. It is generally stated that forty days were granted him for this purpose, but it is certain that this was not always the case. By

A FIFTEENTH CENTURY SEAPORT

(From MS. Egerton 1065 f. 116b)

the Assize of Clarendon persons of evil repute, who had purged themselves by the ordeal without satisfying their neighbours as to their innocence, were required to quit the realm within *eight* days:

"The lord King wishes also that those who shall be tried and shall be absolved by the law, if they be of very bad testimony and are publicly and disgracefully defamed by the testimony of many and public men, shall forswear the lands of the King, so that within eight days they shall cross the sea, unless the wind detains them; and with the first wind which they shall have afterwards they shall cross the sea; and they shall not return any more to England unless by the mercy of the lord King; and there, and if they return, shall be outlawed; and, if they return, they shall be taken as outlaws."

The same fate was in store for any felon who deviated from the highway in proceeding to his assigned port. He might not, however, be reserved for judicial execution, being at the mercy of his captors, who could do as they pleased with him. "Some robbers indeed, as well as some thieves, are lawless—outlaws as we usually call them—some not; they become outlaws, or lawless, moreover, when, being lawfully summoned, they do not appear, and are awaited and even sought for during the lawful and fixed terms, and do not present themselves before the law. Of these therefore the chattels and also the lives are known to be in the hands of those who seize them, nor can they for any reason pertain to the King."[1] (*Dialogus de Scaccario*, x.)

[1] In Norman times the prosecutor was compensated *twofold* out of the chattels of the tried and convicted thief; the rest of his goods went to the King.

An outlaw, as such, was incapable of exercising the most ordinary rights—he could not devise, inherit, own or sell lands or houses. Civilly, he was dead. The only question is whether these disqualifications attached to him as the effects of felony or the resultant outlawry. The point was tested in a case which came before the Common Bench in 1293, and decided by an eminent justice of the period in relation to a certain Geoffrey, who had committed felony, and before this became known had disposed of tenements to one John de Bray. "Inasmuch," said Metingham, "as all those who are of his blood are debarred from demanding through him who committed the felony, in like manner every assign ought to be barred from defending the right to tenements which have come from the hands of felons; and it is found by the Inquest that Geoffrey was seised after the felony was committed. And inasmuch as felony is such a poisonous thing that it spreads poison on every side, the Court adjudges that William [the lord, who had brought a writ of escheat] do recover his seisin, and that John be in mercy for the tortious detinue."

Sanctuary for treason was abolished in 1534, and for crime in 21 Jac. I., but debtors enjoyed the time-honoured immunity, at Whitefriars and elsewhere, till 1697. Who can forget the vivid picture of Alsatia in *The Fortunes of Nigel*?

"The ancient sanctuary at Whitefriars lay considerably lower than the elevated terraces and gardens of the Temple, and was therefore generally involved in the damps and fogs arising from the Thames. The brick buildings, by which it was occupied, crowded closely on each other, for in a place so rarely privileged every foot of ground was valuable; but,

erected in many cases by persons whose funds were inadequate to their speculations, the houses were generally insufficient, and exhibited the lamentable signs of having become ruinous while yet new. The wailing of children, the scolding of their mothers, the miserable exhibition of ragged linens hung from the windows to dry, spoke the wants and distresses of the wretched inhabitants; while the sounds of complaint were mocked and overwhelmed in the riotous shouts, oaths, profane songs, and boisterous laughter, that issued from the alehouses and taverns, which, as the signs indicated, were equal in number to all the other houses; and that the full character of the place might be evident, several faded, tinselled, and painted females looked boldly at the strangers from their open lattices, or more modestly seemed busied with the cracked flower-pots, filled with mignonette and rosemary, which were disposed in front of the windows, to the great risk of the passengers."

URBAN

CHAPTER XIII

BURGHAL INDEPENDENCE

JUST as the Universities and the Judiciary were found to have a common link in the Order of the Coif, so we find that the Judiciary and the City were bound each to each by the existence of by-laws, or, as they were termed in a technical sense, "customs." Although, to avoid misapprehension, these "customs" may be styled by-laws, and many of them strictly answer to the description, on the whole they bore a very different relation to the laws of the land from the by-laws of modern corporations, the latter being purely subsidiary, while the former affected the most important issues, and, in the absence of much general legislation, possessed all the validity of statute law.

CUSTOM IN LAW

As there was considerable variation between the customs of different towns and different counties, it became the duty of the Justices on Eyre to investigate what was the custom, with regard to the subject of the plea, in the particular locality, and they gave their decisions accordingly.

Some of these cases are sufficiently amusing, as may be gathered from the following record of a case heard in the Salop Iter of 1292.

"One Adam brought a writ of Entry against B.—*B.*: 'Sir, we vouch to warranty, &c., W. de C., who is under age, to be summoned, &c.'—C. came and prayed his age.—*Spigornel* (for Adam): 'Sir, according to the custom of the town, he is of age when he knows how to count up to twelve pence, and he shall answer in a writ of Right at that age; and inasmuch as he would answer in a writ of Right at that age, he shall warrant at that age, or shall counterplead, &c. But now he is nineteen years old, which is nearly of full age. Judgment if he shall not warrant or counterplead.' Judgment that he should."

From the same Year-Book we obtain an insight into the working of what may be termed communal law in the weighty matter of succession. One Isabel brought the Novel Disseisin against a chaplain named Martin de Hereford and others for a tenement in Shrewsbury. The defence was that Martin had entered by the devise of one William Silke, and that the custom of the town permitted a man on his death-bed to devise tenements of his own purchase. Isabel's counsel, on the other hand, contended that William's father held the tenements by the law of England, and that William merely purchased the freehold, arguing also that the devise was made in contravention of the statute (7 Ed. I., st. 27), since it was made in mortmain for the beneficiaries to chant for him and his heirs for ever. The Judge ruled that alienation contrary to the statute was no justification for the heir to enter; and he drew attention to the inconsistency of counsel in pleading that Silke

could not devise his inheritance, and that he could devise if there were no infraction of the statute. Counsel thereupon elected to abide by his first contention, and the question of fact was referred to the Assise (or Jury) which found that part of the tenements were in William's seisin and that William had purchased his father's estate therein.

We now come to the concluding passages of this highly interesting suit:

"*Berewyke* [the Judge]: 'For that he could not purchase his own heritage so that it could be styled his own purchase; and he devised the tenements; and the custom of the town does not permit a man to devise his heritage; Therefore this Court adjudges that Sybil (*sic*) do recover her seisin of the tenements which were not devisable. Now what say you as to the remainder?'

"The Assise said that the remainder of the tenements were of his own purchase from several persons in the town, and that in his last illness he devised them to Martin for the term of his life, and that the testament was proved at the Guildhall according to the custom of the town; and that the executors were commanded to deliver seisin to Martin, and that according to the custom he had the seisin, &c.

"*Berewyke:* 'Since it is found that he entered on the tenements according to the custom, &c.—although you were seised for four weeks, yet that ought not to give you a title—this Court adjudges that you do take nothing by the writ, &c. After Martin's death be wēll advised.'"

Communal law, however, was not allowed to *override* the law of England.[1] This principle was asserted in 1293, when Thomas le Chamberleyn brought

[1] Except in the matter of succession. See p. 263.

a writ before the Common Bench against a certain W., who, he complained, had taken his horse in the highway in the town of Bernewell. The writ ran—"took in the highway and still keeps impounded." There was the usual wrangle between counsel, and an attempt was made to oust or invalidate the writ by asserting that six years and a half before it (the writ) was purchased the animal had been surrendered. After this preliminary fencing counsel for the defence produced his real case, which was that by the King's charter the burgesses of Cambridge had a franchise to this extent, that when clerks or other persons were in debt, they might seize their horses or other property within the liberty; and as Thomas was bound in so many shillings, his horse was seized according to the custom of the town, and in no other way. The trespass being admitted, the Judge (Gislingham) proceeded to give judgment on the plea of justification. He said:

"For that it is against the common law and against the statutes to make such a taking in the highway unless he be the King's bailiff, notwithstanding any franchise which the King may have granted, therefore the Court adjudges that Thomas do recover his damages, and that W. be in mercy for his tortious taking."

This leads to another point. Corporations had their local courts, and some of them, by virtue of this fact, claimed exemption from the jurisdiction of the higher courts. Such was the case at Liverpool, and according to Sir F. A. Picton there are instances on record in which they succeeded in establishing their claim. How far these local authorities were fit to be entrusted with the execution of justice may be estimated by some lively incidents which took place in

the early days of October 1565. One Thomas Johnson had been apprehended for picking purses. Apparently he underwent no regular trial, but was dealt with summarily, the programme being as follows: First, he was imprisoned several days and nights, and then he was nailed by the ear to a post at the flesh-shambles. As the next item, he was turned out naked from the middle upwards, and many boys, with withy rods, whipped him out of the town. He was then locked to a clog with an iron chain and horseblock until the Friday morning following, and finally abjured the town before the Mayor and Bailiffs, at the same time making restitution of *6s. 8d.* to the wife of one Henry Myln. Thus, there was a rude efficacy in the process, but it might perhaps have been received as sufficient ground for a writ of *certiorari* if Johnson had again fallen into the hands of his tormentors.

It is certain that at times towns had to answer, through their officers, for alleged acts of illegality in their corporate capacity. Thus in 1292 one Adam —the reader will observe that the records do not give the actual names, Adam being chosen as beginning with the first letter of the alphabet— brought the Replegiare against B., &c., stating that B., &c., had tortiously taken his chattels in the High Street of the Town of Gloucester and conveyed them to their toll booth in the same town. B. and C., the bailiffs, defended the seizure, asserting that by the custom of the town of Gloucester, only freemen might cut cloth there—strangers might sell cloth by the piece, but not cut it. Adam was not a freeman of the town, but, in opposition to the custom, he had come and cut his cloth. As against this Adam produced a charter witnessing that the King had

granted him the right of cutting cloth in the same way as other freemen, and, by virtue of the charter, he maintained that he had been seised from time whereof, &c. The bailiffs repudiated this claim. We do not learn what the judgment was in this case, but the phrase "other freemen" is suspicious. It suggests that the charter had been granted in ignorance of the custom of this particular town, not out of disrespect for it, since the tendency of all the evidence is to show that local autonomy and local privileges in such matters were treated with infinite care. It almost appears as if Adam had taken advantage of an ambiguity. As regards ordinary civil rights Adam was doubtless a freeman—otherwise he could not have brought this action—but he was not a freeman in the sense that he paid scot and lot in the town of Gloucester.

Such persons were often styled "foreigners," and therefore the plaintiff in this case would have occupied precisely the same position as "foreign" merchants who transgressed the customs of London. One of these was that they were not to attend any market or fair at a greater distance than three miles from the City, nor had Justices or Sheriff power to give them leave to do so. If a Sheriff caught any "foreign" merchant beyond those bounds, he was supposed to bring him back, and the money found on his person having been confiscated was shared between the Sheriff and the citizens. If, however, the citizens were alone responsible for the capture, the whole of the money went to them. Other rules were that merchants repairing to London for the sale of linen, cloth and wool might do business only on three days of the week (Mondays, Tuesdays, and Wednesdays). They were then, if anything remained to be sold, to

pack up their goods and wait till the following week; and in no case were they to sell *ad detail* (retail).

A custom which we meet with at Dover and Reading, and was probably adopted by other towns, is one described in sundry ordinances *de stachia*, the latter being barbarous Latin for "stake." This was a device for recovering possession of a tenement after a specified time, when the tenant had fallen into arrears of rent, and consisted in the landlord erecting a stake in front of the house as a notification of his claim. With regard to Reading we find mention of this usage in the record of the proceedings of the portmote in 1290, contained in a volume once belonging to the Abbey of that place and now in the Library of the University of Cambridge. The regulation, as was common at that period, is in Latin, which may be thus rendered:

"It is considered by the whole community of the borough of Reading that all tenements which are recovered by a stake for arrears of rent of four years at least should be recovered under this form hitherto always used—to wit, that whatsoever owner shall have had any rent in any tenement soever shall claim that rent when in the opinion of the court the stake ought to be set up, and unless he shall have made his claim as well concerning the rent as the tenement, he for ever lose it. So it appears in the record of the portmote held on the vigil of the Apostles Simon and Jude in the eighteenth year of the reign of King Edward the First after the Conquest."

CROWN AND TOWN

Despite identity of usage at Dover and Reading on the subject of the stake, it would be pardonable

to conclude that in those times of difficult communication there existed a great diversity of burghal laws, entailing considerable inconvenience and hardship, especially in the case of those engaged in trade. Since the adoption or growth of customs depended on the interests or sentiments of particular communities, diversity was, to some extent, inevitable, but the tendency to local independence—an independence tenaciously maintained and jealously guarded—was tempered by counter-tendencies. Thus it was not always to the interest of a town or city to stand in complete isolation from centres of a similar type, or possibly of a superior organization; and, in such instances, a smaller, weaker, less perfectly developed community might seek to improve its status or fortune by modelling its arrangements on those of a more advanced and more powerful neighbour, and in addition to, and as a corollary of this, enter into a formal or informal alliance with it, in which the latter would hold the position of protector or patron.

In the Middle Ages there subsisted between the towns and the feudal aristocracy an antagonism sometimes silent and slumbering, sometimes wakened into fierce consciousness and expressing itself not only in hardy words, but in sanguinary deeds. On the Continent the towns were the hotbeds of revolution, and the commune, with its mayor as figure-head, signalized the triumph of the insurrectionary temper. This state of things was more marked on the Continent than in England, where the Barons led the assault on tyranny, and where, for his own purposes, the monarch fostered the prosperity of towns of his own planting. But Mr. J. H. Round, in his singularly able article on "The Origin of the Mayoralty of

London," contributed to the *Archæological Journal*, shows conclusively that this institution, now the ægis of all that is staid, stable and respectable, was the offspring of the spirit of revolt which spread like a contagion from Italy to France, Germany, and the Low Countries, and thence to the Thames.

Dr. Gross's valuable contribution to the *Antiquary* (1885) treating of the affiliation of towns, is of a general character, and illustrated largely by Continental examples; any one, however, who wishes to grasp the full significance of mediæval relationships as between town and town, will be well advised in consulting that succinct account. Here we must confine ourselves to English experience, in which the same traits appear, only more faintly. Before proceeding to this inquiry it may not be amiss to advert briefly to another aspect of the subject. We have said above that, in England, the monarch inclined to favour certain towns for his own purposes, and such towns were naturally of the highest precedence. If we turn to Liverpool, we shall find that in 1206 it received a visit from King John, who the following year issued letters patent of which the following is a translation:

"John, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to all his liegemen who would desire to have burgages at the town of Liverpool, greeting. Know ye that we have granted to all who may take burgages at Liverpool that they may have all the liberties and free customs in the town of Liverpool which any free borough on the sea has in our land; and therefore we command that securely, and in our peace, you may come to receive and occupy our burgages. And in testimony thereof we

transmit to you these our letters patent. Witness, Simon de Pateshill, at Winchester, the 28th day of August in the ninth year of our reign."

At a later period the people of Liverpool might not have thanked the Crown for facilitating the settlement of a large body of strangers in their midst. Everywhere burgesses were strongly opposed to the colonization of their towns by "upland men," less on sentimental grounds than from the fact that these "foreigners" frequently did not take steps to become naturalized and pay scot and lot towards communal expenses. Clearly this objection did not apply to Liverpool in this instance, and at that relatively early stage of its history the incorporation of a number of well-to-do and industrious immigrants might naturally have been hailed as a gain. It must have been so regarded by the King.

Liverpool was the port of embarkation for troops sailing to Ireland, and is said to have owed its foundation to this circumstance in the days of Strongbow. The advantage of a numerous, loyal, and able-bodied population was seen in 1573, when the Earl of Essex passed through the place on his way to Ireland. It happened that he left behind him a detachment of soldiers, and the "motley coats" and "blue coats," having quarrelled, used their weapons on each other. With admirable promptitude, the Mayor summoned the trained bands, and the rest of the story may be told in the vivacious language of a contemporary:

"Mr. Mayor and all the town suddenly, as pleased God Almighty, were ready upon the heath, every man with their best weapons; so as by good chance every householder being at home, Sunday morning, eager as lions, made show almost even like to the

number of the captains and all their soldiers. . . . After the battle array [which was efficacious in staying the conflict] Mr. Captain showed all gentleness and courtesy to the Mayor, and came up to the town in friendship and amity."

Trained bands formed part of the equipment of a well-appointed mediæval town—a description to which, as we shall show. Liverpool possessed exceptional claims. But the Crown did not benefit solely in this way. The burgages erected numbered 168, each of which paid a ground rent of one shilling per annum into the royal exchequer. The custom dues of the Duchy of Lancaster were another source of profit, and retainers of the King were occasionally quartered on them. Thus in 1372 one Rankyn, a follower of John of Gaunt, was retained on condition that he "in time of peace shall be at board at court . . . and that he shall have and take for the term of his life, in the whole, twenty-five marks sterling from the farm of the town of Liverpool."

The object of all towns was to acquire the fullest measure of self-government, and in this respect, despite probable exactions arising from the system of fee-farm leases, Liverpool must be reckoned extraordinarily fortunate. The term "commune" also—word of sinister import since 1871, but used in mediæval England in the innocuous sense of "borough"—seems to have special point in reference to the trading regulations of that ancient port, if compared with the greater individualism of other places, though commercial transactions were universally the subject of manifold restrictions designed to protect the interests of the native against the intrusive and vexatious rivalry of the foreigner. At Liverpool matters went far beyond that.

The Corporation itself for a long time farmed the custom dues, and also levied tolls on all merchandise that passed through the port. Much land and other property belonged to it, as well as the ecclesiastical patronage, which included the appointment and dismissal of incumbents, wardens, and other church officers. The hanse, composed of the entire body of freemen and burgesses, required that all produce, upon importation, should be first offered to it, and it was then inspected by "prizers" or appraisers, who gave an estimate of its value. If the importers did not care to sell at the price, they had to haggle with the town respecting the sum to be paid for leave to sell in the open market; and any merchant or trader, who treated with them on his own account, was liable to heavy penalties.[1]

We have previously given a sample of original methods of administering justice at Liverpool, and much might be written of its curious penal code, which embraced such offences as eaves-dropping. Hence the protest embodied in the following presentment of the Grand Jury on March 31, 1651, may well express the inner thought of many preceding generations of culprits:

"Item, wee p'sent William Mee for saying and cursing in the court, pointing his finger towards Mr. Mayor and the Jurie, 'If such men as those can give anie judgment, the Divell goe with you and all the acts you have done.' Amerced in five pounds."

We need not recur to the topic of trained bands, and will only remark that in this and other respects Liverpool obtained a degree of self-sufficiency and independence surpassing anything known at the

[1] "Common town bargains" were the rule also at Dublin.

present time, and, apparently, far beyond the common standard even of mediæval towns. It might therefore have stood forth as an object not so much of envy as of imitation. In point of fact Liverpool—owing, no doubt, to its comparatively late rise and geographical situation—was not one of those towns whose customs were widely copied. In Wales the custom of Hereford held the field, and in the south-west the custom of Winchester, which, through transmission to Newcastle, prevailed also in Northumberland and Scotland. The customs of York and the Cinque Ports attracted smaller groups, while the custom of London was not only mother of the custom of Oxford, but grandmother of the custom of Bedford, since the citizens of Oxford were called in by the last-named town to adjudicate on obscure points, and they themselves repaired to London, as the fountain-head, in the event of any internal dispute. The court of appeal, when mother and daughter towns were at variance on the subject of privileges, was the King and Council. An instance of such reference occurred in 1330, when the following petition was presented:

"The burgesses of Oxford claim that they ought to have the same franchises, laws, and customs as the citizens of London, and to marchander with them in London and without, in all places, quit of all customs, as appears by their charters which the present King confirmed, and by writ to the Mayor and Sheriffs of London commanded that they should permit them to enjoy the said franchises, &c., in the city of London, which writs were received in full hustings, and were allowed and enrolled; but nevertheless the said Mayor and Sheriffs disturb and molest the said burgesses and

make them pay divers customs—whereof they pray remedy."

It may be well to say that this grievance was founded on ignorance or misrepresentation, as the relations between London and Oxford were defined by agreements in 1 Edw. I., in which customs were excepted.

In England the powers of the mother-town were purely advisory, whereas on the Continent some towns appear to have exercised coercive jurisdiction over those whose laws were derived from them. Perhaps this circumstance,..that the process was one of adoption rather than subjection, was the chief reason why English towns were so careful not to communicate their privileges, at any rate freely, to boroughs of *servile* condition, *i.e.*, those which owed service to some lord. The case of Hereford is thus stated:

"The King's cittizens of Hereford, who have the custodye of his citty (in regard that it is the principall cittye of all the market townes from the sea even unto the boundes of the Seaverne) ought of ancient usage to deliver their lawes and customes to such townes, when need requires, yet in this case they are in noe wise bound to do it, because they say they are not of the same condition; for there are some townes which hould of our Lord the Kinge of England and his heires without any mesne Lord; and to such we are bound, when and as often as need shall be, to certifie of our lawes and customes, chiefly because we hold by one and the same tenure; and nothing shall be taken of them in the name of a reward, except only by our common towne clerke, for the wryting and his paynes, as they can agree. But there are other markett townes which

hold of diverse lords of the Kingdome, wherein are both natives and rusticks of auncient tyme, who paie to their lord corporall services of diverse kinds, with other services that are not used among us, and who may be expelled out of those townes by their lords, and may not inhabit in them or be restored to their former state, but by the common law of England. And chiefly those and others that hold by such forreine service in such townes, are not of our condition; neither shall they have our lawes and customes but by way of purchase, to be performed to our capitall bailiff, as they can agree between them, at the pleasure and to the benefitt of the citty aforesaid."

Towns were extremely jealous of their purity in this respect—a fact which may be illustrated in another way. Thus no person of servile condition was allowed to be a freeman of the city of London. If, after admission, he was ascertained to be of such condition, he forfeited his rights. During the mayoralty of John Blount, Thomas le Bedelle, Robert le Bedelle, Alan Undirwoode and Edmund May, butchers, lost their franchises, because they acknowledged that they held land in villeinage of the Bishop of London and dwelt outside the liberty. On July 18, 11 Rich. II., it was ordained that no one should be enrolled as an apprentice or received into the freedom of the city by way of apprenticeship unless he first swore that he was a freeman and not a native, and whoever should be thereafter received into the freedom of the said city by purchase or any way but by apprenticeship should make the same oath, and also find six honest men to undertake for him as had been wont to be done of old.

"And if it happen that such native be admitted by false suggestion without the knowledge of the Chamberlain, as soon as the circumstance is notorious to the Mayor and Aldermen, let him lose the freedom of the city and pay a fine for his deception, at the discretion of the Mayor and Aldermen.

"Again, if it happen in the future that such native, at the time of whose birth his father was a native, be elected to a judicial office of the City such as Alderman, Sheriff, or Mayor, unless he notify to the Mayor and Aldermen concerning the servile condition before he receive that office, he shall pay to the Chamberlain for the use of the City one hundred pounds, and nevertheless shall lose his freedom, as aforesaid."

A Paradise of Police

Thus the fundamental principle of freedom, in all corporate towns, was independence of the feudal aristocracy, and along with this went a sense of social superiority relatively to those dependent upon, and subject to, lords of fees. Burgesses claimed to be masters in their own house and acted in concert with an eye to the common good. This led to the growth or institution of customs divisible into two main categories. One of these was concerned with the correction of refractory or immoral persons dwelling within the gates; and the other with the regulation of commerce. These categories were not entirely divorced, since the infraction of trade ordinances was visited with something more than mere obloquy. On the other hand, the presence of evil livers, though it had no immediate bearing on commerce, added nothing to the security, prosperity,

and reputation of the town or city. The customs of London form too large a subject to receive adequate treatment here, but in what remains of our space we propose to limit ourselves to them alone.

It would be possible to write at considerable length on the position of aliens in mediæval London, and, incidentally, on the charming festival of the Pui, wherewith they consoled themselves for the many hardships and restrictions inflicted on them by the jealous citizens, examples of which have been previously given. Reserving this topic for another occasion, we will glance at certain enactments with which innkeepers and their congeners found their avocations fenced about. The citizens did not welcome the appearance of casual strangers, any more than the presumption of the foreigner who came and settled amongst them. Almost of necessity the former class resorted for food and shelter to the public houses, which were of two kinds—the inns kept by hostelers, and the lodging-houses kept by herbergeours. These places of resort were supplemented by cook-shops answering to our modern restaurants.

In the time of Edward I. an ordinance was passed that "no Portuguese or Germans shall keep hostels, but that persons of those countries shall lodge with freemen of the city." It has been supposed that by "freemen" are intended native freemen, but this is doubtful, since cases occur of strangers and foreigners being admitted to the freedom for the very purpose of becoming hostelers and herbergeours. Even when this privilege was granted them, they were not suffered to compete on equal terms with the Englishman, being required to keep their houses "in the heart of the City," and rigidly excluded from

the more profitable regions on the banks of the Thames.

The necessity of hostelers and herbergeours being freemen was due apparently to the survival of the old Saxon law of frank-pledge, which was still in force at the close of the reign of Edward III. No hosteler or herbergeour might entertain a stranger longer than a day and a night, unless he undertook to answer for his guest's behaviour, and he was left in no uncertainty as to the course of conduct he was expected to pursue towards the always undesirable alien. In many respects his position resembled that of a master of a workhouse rather than a speculative tradesman. Thus, at times when it was forbidden to carry arms in the City, it became his duty to take possession of his guests' arms and retain them until the strangers departed. If the latter did not comply with his demand, they were fined and imprisoned. At other times, when the regulations were not so severe, he had to tell his guests that they were not to carry arms after curfew rang, or go wandering about the streets of the City. Should it happen that urgent business compelled a guest to be absent from the hostel for a night, the keeper was obliged to warn him, with the best grace he might, that he must take care to be back as soon as possible.

In this connexion it seems natural to allude to a custom, a reminiscence of which is to be found in the familiar proverb "Good wine needs no bush." Students of our early literature will hardly need to be reminded of Chaucer's description of the gay somnour:

> A gerland hadde he set upon his heed
> As greet as it were for an ale-stake.

In the prologue of the *Pardoner's Tale* also, when that worthy is requested by the host to regale the company with some mirthful story:

> "It shall be done," quod he, "by seint Ronyon!
> But first," quod he, "heer at this ale-stake
> I wol both drinke, and eten of a cake."

The ale-stake was a pole projecting from the house horizontally, and on it was suspended a bunch of leaves. Probably it was the progenitor of the whole family of "signs," afterwards so common. It is easy to imagine that the enterprise of the host might be gauged by the length of his pole, and such competition seems really to have occurred, to the inconvenience of the general public, since in London an ordinance of the time of Richard II. was framed expressly to restrain it.

"Also it is ordained that whereas the ale-stakes, projecting in front of the taverns in Chepe and elsewhere in the said city, extend too far over the King's highways, to the impeding of riders and others, and, by reason of their excessive weight, to the great deterioration of the houses to which they are fixed—it is ordained that in future no one shall have a stake bearing either his sign or a bunch of leaves extending or lying over the King's highway of a greater length than 7 feet at most."

Obviously there would have been much unfairness in making hostelers and herbergeours answer for the misdeeds of persons with whom they had only transient relations, if there had been no system for preventing the escape of dishonest and desperate characters who would be especially susceptible to the attractions of a great city and could not be held in check by the fatherly admonitions

of an anxious host. Nor, again, was it to be supposed that the native population consisted wholly of highly moral and virtuous persons, incapable of such low crimes as burglary. To counteract the designs of these enemies of order, it was enacted *temp.* Edward I. that barriers and chains should be placed across the streets of the City and "more especially towards the water (Fleet River) near the Friars Preachers." From the same reign also dates an ordinance that the Aldermen and men of the respective wards should keep watch and ward on horseback at night, each Alderman keeping three horses for that object. Moreover, each of the City gates was placed in charge of a Sergeant-at-arms, who had his quarters over the gateway. It was the duty of this official to keep guard by night, and he was assisted in this task by a watchman (wayte), whose wages he had to pay out of his own salary. The regulations of the City required that each gate should be kept in the day-time by two men, well armed; and on certain occasions the Bedel received orders to summon the men of the ward to watch the gate armed. If they did not attend in person, they had to find substitutes at their own expense.

One of the grandest spectacles in Old London was that of the Marching Watch on St. John's Day. Comprised in it were about two thousand men, some mounted, others on foot. There were "demi-lances" riding on great horses; gunners with harquebuses and wheel-locks; archers in white coats; bearing bent bows and sheafs of arrows; pikemen in bright corslets, and bill-men with aprons of mail. There was likewise a cresset train numbering nearly two thousand men. Each cresset—a flaming rope, soaked in pitch, in an iron frame held aloft on a

shaft—was carried by one man and served by another. Very imposing were the Constables of the Watch, with their glittering armour and gold chains, each preceded by his minstrel and followed by his henchman, and with his cresset bearer by his side. Then came the City waits (musicians) and the morris dancers—Robin Hood, Maid Marian, and the rest; after whom appeared the Mayor, with his sword-bearer, henchmen, foot-men, and giants, followed by the Sheriffs. All the windows facing the street stood open, and there was no lack of distinguished spectators. To quote Nicols:

> Kings, great peers, and many a noble dame,
> Whose bright, pearl-glittering robes did mock the flame
> Of the night's burning lights, did sit to see
> How every senator, in his degree,
> Adorn'd with shining gold and purple weeds,
> And stately mounted on rich trappèd steeds,
> Their guard attending, through the streets did ride
> Before their foot-bands, graced with glittering pride
> Of rich gilt arms, whose glory did present
> A sunshine to the eye, as if it meant
> Amongst the cresset lights shot up on high
> To chase dark night for ever from the sky.

By the Setting of the Watch on Midsummer Eve appears to have been meant the stationing of these armed guards in various parts of the City, which they were to secure from harm on that night only. In the thirty-first year of his reign Henry VIII. abolished the Marching Watch, and substituted for it a permanent watch maintained out of the funds which had previously gone to support the great annual pageant. For harnessed constables Londoners now had watchmen equipped with lanthorn and halberd, whose duty it was to call upon the sleeping

citizens to hang out their lights, as required on dark wintry nights :

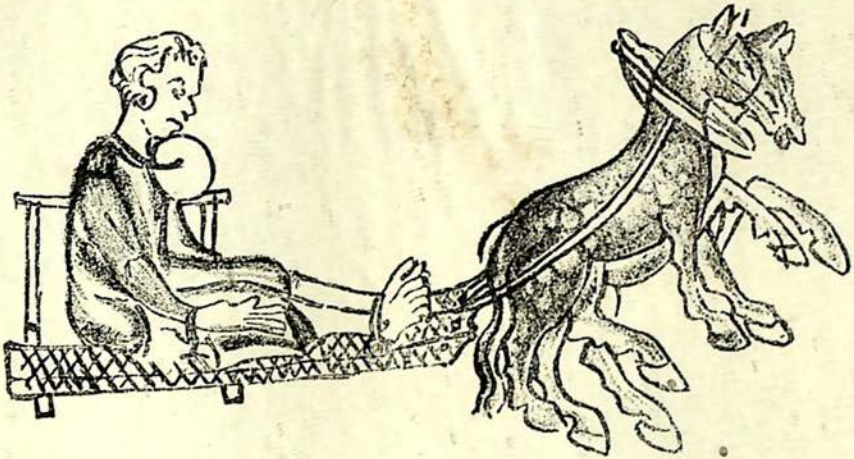
> Lanthorn and a whole candle light.
> Hang out your lights! Hear!

The next thing to be added was a bell. This institution was not popular with all; and Dekker, satirically expressing the feeling of the malcontents, defined the bellman as "the child of darkness, a common night-walker, a man that had no man to wait upon him, but only a dog ; one that was a disordered person, and at midnight would beat at men's doors, bidding them (in mere mockery) to look to their candles, when they themselves were in their dead sleeps."

Milton, on the other hand, makes grateful mention of the salutation as a lullaby and prophylactic :

> Far from all resort of mirth,
> Save the cricket on the hearth
> Or the bellman's drowsy charm
> To bless the doors from nightly harm.

Having said something of the means employed to prevent crime and arrest criminals, we must go on to refer to the punishments in vogue in the event of conviction. And here it may be observed that, among other interferences with commerce and the liberty of the subject, hostelers were not allowed to make either bread or beer. The former they were compelled by public enactment to buy from the baker, and the latter from the brewer or brewster (female brewer). But the City, if it defended what was esteemed the legitimate claim of the baker to a proper livelihood, was equally solicitous for the welfare of his customers, and woe betide the baker who



PUNISHMENT OF A FRAUDULENT BAKER

(From the Assisa Panis in the Guildhall, London)

sold bread deficient in weight or quality! For the first offence he was drawn on a hurdle from the Guildhall through the principal streets, which would be thronged with people and foul with traffic, and hanging from his neck was the guilty loaf. In the Record-room at the Guildhall is an Assisa Panis containing a pen-and-ink sketch of the ceremony, from which it appears that the unhappy tradesman wore neither shoes nor stockings and had his arms strapped to his sides. It seems also that the hurdle was drawn by two horses, which suggests that it was rattled along at an inconsiderate pace. For the second offence the baker was again conveyed on a hurdle "through the great streets of Chepe," and he further underwent an hour's exposure in the pillory, probably erected in Cheapside, with what consequences may be imagined. If he proved so incorrigible as to commit the offence a third time, the hurdle was again requisitioned, but, public patience being exhausted, his oven was demolished and he was forced to abjure his trade of baker in the City for ever. From the reign of Edward II. the penalty of the hurdle was no longer imposed for the first offence, the pillory being employed instead.

Exposure in the pillory was a favourite prescription, a kind of judicial panacea, to which all sorts of the morally infirm were introduced in turn. Mr. Riley has compiled a list of the sins atoned for by such involuntary penance, which, if we were guided by that alone, would testify to a shocking state of depravity in the Metropolis. Culling from this catalogue, we find that the pillory was considered a fitting reward for various impostures: pretending to be a holy hermit; pretending to be the son of the Earl of Ormond; pretending to be a physician;

pretending to be the summoner of the Archbishop of Canterbury, and so summoning the Prioress of Clerkenwell; pretending to be one of the Sheriff's sergeants and meeting the bakers of Stratford, and arresting them with a view to fraudulently extorting a fine, etc., etc. *Scandalum magnatum* also merited the pillory—a fact brought home to an idle gossip who occupied that uneasy elevation for "telling lies" about the famous Mayor, William Walworth. "Telling lies" of John Tremayne the Recorder was, in the same way, held to justify a public exhibition of the impudent and imprudent person. So, too, anti-social forestalling.

There were cases, however, in which this common method of advertising paltry offences was thought not to involve an adequate degree of notoriety and reprobation. We have already adduced one instance —that of the unscrupulous baker—in which it was attempted to evoke superior indignation. There were others. The natural destiny of impostors was, as we have seen, the pillory; among the qualifications for this shadow of crucifixion being "pretending to be a physician."

In the reign of Edward VI. a poulterer named Greig acquired a reputation for healing the most inveterate diseases, but on examination he proved to be a "crafty deceiver," and was ordered to stand in the pillory in Southwark, where he asked pardon of the Lord Mayor, the Aldermen, and the citizens for his impositions. Deception of this kind is apt to be attended with serious consequences, and therefore it occasions little or no surprise to find that in a ruder age exhibition in the pillory was deemed all too mild a chastisement for such enemies of mankind. Stow records that in the time of Richard I. a pretender to

medical science was led on horseback through the streets of London, with his face turned towards the animal's tail, and with a "collar of Jordans" round his neck, to which was attached a whetstone—perhaps the very instrument with which he pounded his simples. During his progress the populace greeted him with shouts and "rung him with basons."

The treatment of the quack reminds us of the well-known customs of Riding the Stang, and Skimmington Riding; and this leads to the remark that the civic fathers endeavoured to cope with the "social evil" by drenching all engaged in immoral traffic with nauseous doses of public ridicule. Thus, if a man were convicted of keeping a house of ill-fame, immediately his hair and beard were shaved off, save for a fringe (*liste*) on his head two inches in breadth. He was then conveyed to the pillory, accompanied by minstrels, and there he had to abide at the discretion of the Mayor and Aldermen. If he was found guilty of the offence a third time, he was compelled to abjure the City.

A woman convicted of being a common night-walker was committed to prison—probably the Tun, on Cornhill—and thence she was led to Aldgate with a hood of rayed cloth on her head and a white wand in her hand. Next she was escorted by musicians to the thewe (pillory)—in Cheap, probably—and there the character of her offence was proclaimed. Finally, she was taken through Cheap and Newgate to "Cokkeslane" without the walls, where she was required to dwell. If guilty a third time, her hair was cropped close, while she stood in the pillory, and she was marched to one of the gates and made to abjure the City for the remainder of her life. A procurer or procuress was also set in the

thewe to the accompaniment of music, with a "distaf with towen"—*i.e.*, a distaff dressed with flax—in his or her hand; and the transgressor was made to serve as a public spectacle for such time as the Mayor and Aldermen deemed fit. A priest detected in the company of a loose female, if she were single, was conveyed to the Tun, attended by musicians; and, upon a third conviction, he was forced to abjure the City for ever, the woman meanwhile being taken to one of the Sheriff's Counters and thence to the Tun. If his partner in guilt chanced to be married, both of them were conducted to one of the Counters, or to Newgate, and after that to the Guildhall; and, in the event of conviction, they were removed to Newgate, where their heads were shaved like those of thieves. This done, they were led with the inevitable music through Cheap, and lastly incarcerated in the Tun during the pleasure of the Mayor and Aldermen. The same procedure was observed if the male offender was a married layman.

Incidentally in the course of the narrative we have mentioned various instances of interference with business. We may conclude the chapter by citing a few more, and, as we have spoken of bakers, illustrations may be drawn from that trade. Every baker dwelling within the walls was obliged to have his own seal for impressing the loaves, and these seals were periodically inspected by the Alderman of the Ward, who kept a counterpart of the impression. A baker might not sell bread "before his ŏven" or in any secret place—only in the King's markets; and to every baker was assigned his market, to which the bread was carried in baskets, hence called panniers. "Panyers Alley," in Newgate Street, was

a famous stand for bakers' boys. Bread was sold also by female hucksters or regratresses, who received it from the bakers and delivered it from house to house. They were allowed to have thirteen batches for twelve, which is the origin of the phrase "baker's dozen," and the extra batch represented their legitimate profit; but a practice grew up whereby they obtained sixpence on Monday mornings as *estrene*, and threepence on Fridays as "curtasie money." This was disallowed by ordinance on pain of amercement, and bakers were admonished, in lieu of such payments, to increase the size of the loaf "to the profit of the public."

URBAN

CHAPTER XIV

THE BANNER OF ST. PAUL

BLOUNT'S *Ancient Tenures*, a meritorious seventeenth-century work which has been edited by Mr. W. C. Hazlitt, contains a description of the military and civil functions performed, and the privileges enjoyed, by the house of Fitzwalter, in connexion with the City of London. The latter stand in close relation to the subject with which we have just dealt, but it will be convenient to discuss first the obligations and then the "liberties" annexed to their observance. By way of preface we may recapitulate what Blount, who obtained his account from Dugdale, has recorded, and, having done so, we will proceed to investigate and amplify his version of what is beyond question an important chapter in the early administration of the city.

Confining ourselves to the facts as there stated, we find that the duty of providing for the safety of London devolved on the hereditary castellans, the Fitzwalters, Lords of Wodeham, who discharged the office of Chief Standard-bearer in fee for the castlery of Castle Baynard within the City. When war loomed on the horizon, Fitzwalter, armed and astride his horse of service, and attended by twenty men-at-arms, who were mounted on horses harnessed

with mail or iron, proceeded to the great door of the Minster of St. Paul with a banner of his arms displayed before him. There he was met by the Mayor, Sheriffs, and Aldermen, who came armed and afoot out of the Minster, the Mayor bearing his banner, which was *gules* and charged with the image of St. Paul, *or*, the head, hands, and feet *argent*, and in the hands a sword also *argent*.

On perceiving their approach, Fitzwalter dismounted, saluted the Mayor as his comrade, and, addressing him, said: "Sir Mayor, I am come to do my service, which I owe to the City." The Mayor, Sheriffs, and Aldermen replied thereupon: "We allow you here as our Standard-bearer of this City in fee, this banner of the City to carry and govern to your power, to the honour and profit of the City."

Fitzwalter then took the banner in his hand, and the Mayor and the Sheriffs, following him to the door, presented him with a horse of the value of £20, garnished with a saddle of his arms and covered with a sendal of the same. They also delivered to his chamberlain £20 sterling for his charges of that day. Holding the banner in his hand, Fitzwalter mounted the horse presented to him, and, as soon as he was seated, desired the Mayor that a marshal might be chosen straightway out of the host of London. This request having been complied with, he preferred another—namely, that the common signal might be sounded through the City, when it would be the duty of the commonalty to follow the Banner of St. Paul, borne before them by the Castellan, to Aldgate.

In the event of Fitzwalter marching out of the City, he chose from every ward two of the sagest inhabitants to superintend the defence of the City

in his absence, and form a council of war, holding its sittings in the Priory of the Trinity adjoining Aldgate. It was supposed that the Army of London might be engaged from time to time in besieging towns or castles; and should a siege exceed a year in duration, the utmost amount Fitzwalter could claim as remuneration was one hundred shillings.

If such were the duties of the Castellan in time of war, he had rights hardly less important in time of peace. Here it should be premised that under Norman rule the King's justice or the King's peace was assured by the grant of soke and soken—the former being the power of hearing and determining causes and levying fines and forfeitures, and the latter the area within which soke and other privileges were exercised. In the City of London the Fitzwalters had a soken extending from the wall of the Canonry of St. Paul as a man went down by the "bracine" or brewhouse of St. Paul to the Thames; and thence to the side of the mill that stood on the water running down by the Fleet bridge, by London Walls, round by the Friars Preachers to Ludgate, and by the back of the friary to the corner of the wall of the said Canons of St. Paul. It embraced, in fact, the whole parish of the Church of St. Andrew, which was in their gift.

Appendant to this soken were various rights and privileges. Fitzwalter might choose from the sokemanry, or inhabitants of the soken, a Sokeman *par excellence*; and if any of the sokemanry was impleaded in the Guildhall on any matter not touching the body of the Mayor or any of the Sheriffs for the time being, the Sokeman might demand the court of Fitzwalter. But while the

Mayor and Citizens had to allow him to hold his court, his sentence was expected to coincide with that of the Guildhall. He exercised, indeed, a co-ordinate rather than an appellate jurisdiction, as may be shown in the following manner:

Suppose that a thief had been taken in the soken, stocks and a prison were in readiness for him; and he was thence carried before the Mayor to receive his sentence, but not until he had been conveyed to Fitzwalter's court and within his franchise. The nature of the sentence, to which the latter's assent was required, varied with the gravity of the offence. If the person were condemned for simple larceny, he was conducted to the Elms, near Smithfield—the usual place of execution before Tyburn was adopted for the purpose—and there "suffered his judgment," *i.e.*, was hanged like other common thieves. If, on the other hand, the theft was associated with treason, the crime, it was considered, called for more exemplary punishment, and the felon was bound to a pillar in the Thames at Wood-wharf, to which watermen fastened their boats or barges, there to remain during two successive floods and ebbs of the tide.

So important a franchise in the City was in itself a high honour, and it carried other distinctions with it. The Fitzwalter of the day, when the Mayor was minded to hold a Great Council, was invited to attend, and be a member of it; and on his arrival, the Mayor or his deputy was required to rise and appoint him a place by his side. During the time he was at the hustings, all judgments were pronounced by his mouth, and such waifs as might accrue whilst he was there were presented by him to the bailiffs of the City or to whomsoever he pleased, by the advice of the Mayor.

Such is the story as we find it in the pages of Blount, in which it appears *à propos* of nothing—merely as an instance of curious and picturesque usages which had long ceased to exist. Blount, as we have seen, gives as his authority Sir William Dugdale, who alludes to the subject in his *Extinct Baronage of England*, and Dugdale seems to have owed the information to the *Collection of Glover, Somerset Herald.* Stow also knew of the "services and franchises," and it is thought that he had seen a copy of them in the *Liber Custumarum.* The latter is accessible in print in Riley's edition of the *Munimenta Gildhallæ Londiniensis*, and corresponds in all or most respects with what we have found in Blount.

So much for the antecedents of the story.

The Fitzwalters are said to have come over with the Conqueror, and to have been invested with the soke before mentioned by his favour and in requital of their services. That the family had at one time extraordinary rights in the City of London is shown by the evidence of the Patent Rolls, from which we learn that in the third year of Edward I. (1275) Robert Fitzwalter received licence from the Crown to transfer Baynard Castle, "adjoining the wall of the City, with all walls and fosses thereunto pertaining, as also the Tourelle called Montfichet," to Robert Kilwardley, Archbishop of Canterbury, for the purpose of founding the House and Church of the Friars Preachers—"provided always that by reason of this grant nothing shall be extinguished to him and his heirs which to his Barony did belong, but that whatsoever relating thereto, as well in rents, landing of vessels, and other franchises and privileges in the City of London or elsewhere,

THIRTEENTH CENTURY LONDON

(From MS. Royal 13 A. iii f. 11a)

without diminution unto him the said Robert, or to that Barony, have recently belonged, shall henceforth be reserved."

This Robert was the son of Walter Fitzwalter and grandson of his more illustrious namesake, the Marshal of the Army of God and Captain of the Barons in the days of King John; and it may be noted in passing that either to the last-named or his son Walter, as lord of Dunmow in Essex, has been ascribed the institution of the Flitch. Thirty years after the sale of his patrimonial estate Robert Fitzwalter, in 1303, recited and claimed his "services and franchises" before Sir John le Blount, Warden of the City; and as late as 1321, as shown by the *Placita de Quo Warranto*, the Justiciars of the Iter were inquiring into the claims of Fitzwalter in relation to the City of London. One of his rights he was prepared to waive—namely that of drowning traitors at Wood-wharf. The Justiciars refused to take cognizance of the matter, but the Fitzwalters did not soon or easily abandon their demands, which were renewed by John, grandson of Robert Fitzwalter, in 1347. On the feast of St. Matthew in that year it was announced to the Mayor, Aldermen, and Citizens in Common Council "that John, Lord Fitzwalter claims to have franchises in the Ward of Castle Baynard wholly repugnant to the liberties of the City, and to the prejudice of the estate of his lordship the King, and of the liberties of the City aforesaid. For now of late he has made stocks for imprisonment of persons in the said Ward and [has claimed] to make deliverance of persons imprisoned." Thereupon it was agreed "that the said John had no franchise within the liberties of the City aforesaid, nor was he in future to intermeddle with any pleas

holden in the Guildhall of London or with any matters touching the liberties of the City."

Probably this resolution served as a quietus of the efforts of the Fitzwalters to establish or re-establish the right of jurisdiction over the citizens of London. It seems likely that these were endeavours to re-institute ancient privileges rather than to create new. The document in the *Liber Custumarum*, used in support of the claims of Robert Fitzwalter in 1303, contains a reference to the Friars Preachers, which would lead to the supposition that it was drawn up at the time; but Riley believes that it was remodelled, perhaps only to the extent of this interpolation, and that otherwise it was a copy of an earlier pronouncement pertaining to the days of the first Robert Fitzwalter, who would have been the actual owner of Baynard Castle.

This has an important bearing on the reality of the dual or reciprocal obligations, which were apparently embodied in a compact between the Mayor and Citizens of London on the one part, and their military chief or champion on the other. Thus it will be necessary to glance at the personal history of the elder Robert Fitzwalter, on which something has been already said. According to the Chronicle of Dunmow and other early records, the principal reason of Fitzwalter's insatiable hatred of King John was that the monarch had attempted the chastity of Matilda, Robert's fair daughter, who, by the way, is identified by Anthony Munday and other Elizabethan playwrights with the Maid Marian of Robin Hood. Dugdale is disposed to accept this story; but, granting that it is true, it hardly suffices to explain Fitzwalter's pre-eminence in the forces of the rebellious Barons. This seems to have been

due to his influence with the wealthy citizens of London, who were among the staunchest opponents of the astute and tyrannous sovereign. On May 24, 1215—the Sunday next before Ascension Day, when many of the inhabitants would have been in attendance on Divine service—the army of the Barons, marching from Ware, were permitted to enter the City, unopposed, through the gate of Aldgate. Fitzwalter's position as Castellan, and his connexion with the Priory of Holy Trinity at Aldgate, furnish an easy and natural explanation of this proceeding. In 1217 the citizens of London raised a force of 20,000 men for the assistance of the Dauphin of France against King Henry and his guardian William Marshal, Earl of Pembroke, and Robert Fitzwalter acted as commander. He died in 1234, and was buried before the high altar in the church of Dunmow Priory.

In the description of the banner delivered to Fitzwalter by the Mayor we have the earliest mention of the assumption of any sort of arms by the City of London. It may be noted that the sword is stated by some heraldic authorities to have been argent, whilst by others this detail is omitted. In Saxon times York also had its standard-bearer. The "Great Gate" of St. Paul's was probably the Northern Gate.

Still keeping to the military aspects of the subject—at the commencement of the fourteenth century there was at the west end of St. Paul's Cathedral a waste piece of ground, which was the property of the City; and here it was the custom for the citizens to make a muster of arms under the command or inspection of the lord of Baynard Castle for the defence of the City, "so often as the

said citizens might see fit." Moreover, at the east end of the church lay a smaller plot, on which the citizens held folk-motes and made parade of arms for preserving the King's peace. This was perhaps a relic of the Anglo-Saxon institution of Inward, which is mentioned in Domesday, and was designed for the maintenance of order within the walls. Adjacent to this smaller plot was the clochier or campanile of St. Paul's, which was a distinct building from the cathedral proper, and contained the great bell, known as the *motbelle*, by which the citizens were summoned to the Folkmote or an assembly of arms on occasions "when within the respective bailiwicks of the Aldermen anything unexpected, doubtful or disastrous against the realm, or the royal crown, chanced suddenly to take place." When the King required the services of the Host of London against foreign enemies or outside the confines of the City, it is natural to suppose that the muster was held on the larger of the two spaces.

The musters and parades of the Host probably lapsed when, by the sale of Baynard Castle, the Fitzwalters ceased to be *de facto* Castellans of London. This is a fair inference from the circumstance that in 1321 the citizens complained before the Justiciars Itinerant that the Dean and Chapter had unlawfully taken possession of the vacant spaces, enclosed them with walls, and even erected dwelling-houses on the eastern plot. The blazonry of the Banner of St. Paul, which would have been no longer used, was so far forgotten that eighty or a hundred years later nothing remained but the sword, which was supposed to stand for the dagger of that militant mayor, Sir William Walworth, who

is said to have terminated therewith the lawlessness of Wat Tyler.

The franchises appertaining to the Fitzwalters in time of peace may be dismissed more briefly. We have seen what they were, and, remarkable as they appear, there seems to be nothing inherently improbable in any of them. The most singular, to an ordinary reader, is perhaps the right to punish traitors by drowning. This punishment, which was most likely of Scandinavian or Teutonic origin, was not confined to the soken in which the Fitzwalters exercised jurisdiction. In the Cinque ports it was the privilege of freemen condemned on a capital charge, to be drowned in the sea, whereas non-freemen suffered the usual penalty of hanging. At Hastings and Winchelsea, however, this distinction is said not to have existed; at both places all executions took place by drowning.

It may be added that, according to the *Liber de Antiquis Legibus*, in the year 1266, when the Earl of Gloucester was negotiating with Henry III. at Westminster, some of his adherents plundered many, and killed one, of the citizens of London. Four of the malefactors—men in the service of Lord Ferrers—were by the Earl's orders seized, bound hand and foot, cast into the Thames, and drowned. "And such," we are informed, "was the judgment passed during all this period upon those who were condemned."

CHAPTER XV

GOD'S PENNY

WERE we obliged to sum up the difference between town and country in one word, that word would be "trade." In mediæval, far more than in modern times, country places had their fairs, but London, with its markets open Sundays and week-days, enjoyed all the benefits of a perpetual fair; from which strangers and foreigners, though under some disadvantages compared with freemen, were by no means excluded.

One of the great principles regulating commercial transactions in the Middle Ages and enforced by law and custom was publicity. Bakers, as we have seen, might not sell bread "before their oven," and to this we may add that fishmongers might not take fish into their shops—they had to expose it for sale outside. The object of such arrangements was to ensure fair dealing all round. As Justice is usually figured with a pair of scales, it may be taken for granted that the important question of due weight did not escape the attention of legislators, and it attained considerable prominence in 31 Edward I. (A.D. 1303), in which year the statute De Nova Custuma was promulgated. This statute provided that in every market town and fair throughout the Kingdom there was to be erected

in some fixed spot the Royal Beam or Balance, and that both vendor and purchaser were to view the scale before weighing, to see that it was empty. Prior to being used, the arms of the balance had to be exactly equal, and when the tronator was weighing, he had to remove his hands as soon as they were level. It may be observed that the citizens of London refused to accept the "New Custom," stating that it had always been the custom for all buyers of wares, whether archbishops, bishops, earls, barons, or other persons, to have the draught of the beam; but we have learnt by this time that a local custom was not allowed to override the law of the land, and thus it is most improbable that this protest, though it led to the issuing of two Royal mandates, was long persisted in.

But the "New Custom" statute contained another provision—namely, when once a bargain had been ratified, neither of the contracting parties was to recede from it. If they, or either of them, took this course after the weighing process, it would be bringing the Royal Beam into contempt, and such profanation could not be contemplated; but the sacredness of contract had been affirmed by local ordinances or customs before this measure was enacted. A contract was held to be good when God's Penny, or earnest money, had been given and received by the principals. As God's Penny, or that which it symbolized, was the basis of all business, and business was the life of towns, the custom appears worthy of notice in some detail.

The *arles*, or earnest money, was given to a servant on hiring, as shown by an entry in the Shuttleworth Accounts (printed by the Chetham Society) for September 1590: "4*d*., earnest money, was paid unto a cook to serve at the next Assizes." Similarly,

in February 1592: "To John Hay upon earnest to serve for a year as butler and brewster at Smithhills, 4*d.*" Previous entries state that 12*d.* was paid to John Horebyn "upon erlynges" of a bargain for ditching, and that "3*d.* was given of erles unto the gardener for his hiring another year."

Mr. Gerald P. Gordon, to whom we are indebted for much valuable information, quotes as an analogous instance the gift of the "King's shilling" to a recruit on enlistment. As regards mercantile transactions he considers that the usage "was not so much a partial or symbolic payment of the price as a distinct payment for the seller's forbearance to deliver to somebody else." This view of the case appears to us extremely doubtful, as it would render the contract binding on one of the parties only—namely, the buyer, whereas Bracton and *Fleta* aver that, if the seller default, he must pay double the earnest. Mr. Gordon subsequently adduces a Preston decree, that "if a buyer should buy any goods in large or small quantities and give earnest, and he who agreed to sell should rue the bargain, he shall pay the double asked. But if the buyer fingers the goods, he must either take them or pay the seller 5*s.*" We infer, therefore, from his evidence alone, that the payment of earnest was essentially symbolical and served all the purpose of a written contract.

That the act was regarded as expressive of mutual understanding is shown by a Northampton ordinance of about the year 1260: "that if any one put a penny or any merchandise before the seller be agreed to the bargain, he shall forfeit the penny to the use of the bailiffs." The importance of the due fulfilment of the contract was recognized by the imposition of a penalty on any one who delivered the earnest and

afterwards declined to make good the bargain. At Waterford about 1300 it was enacted that "whoever gives God's silver and repents, be he who he may, shall pay 10*s*." ; and at Cork in 1614 an ordinance was passed, disfranchising the defaulter of his councillorship and freedom and compelling him to pay a fine of £20.

In the early part of the sixteenth century God's Penny was paid at Waterford on ships' freights ; and at Youghal, in 1611, it was paid into court for the right of buying wines on board ship. As 5 may have been noticed in previous examples, the arles did not necessarily consist of a penny. An ordinance of Berwick of the year 1249 declared : "If any one buy herring or other aforesaid goods and give God's penny or other silver in earnest, he shall pay the merchant from whom he bought the said goods according to the bargain made." But a penny sufficed. Noyes, the Attorney-General of Charles I., is emphatic on this point. "If," he says in his *Maxims*, "the bargain be that you shall give me two pounds for my horse, and you do give me one penny in earnest, which I do accept, this is a perfect bargain." The impression left upon one's mind is that the most important contracts as well as the most trifling dealings were settled by the exchange of God's Penny or some equivalent ceremony.

Now it is evident on the face of it that the transactions must have taken place in the presence of witnesses ; otherwise a man who had made an awkward bargain would have found it easy to escape from his dilemma by denying that he had either given or received the penny. In early times, before writing became a common accomplishment, and when, as now, men might be eager to clinch a bargain

without loss of time, it was desirable in the interests of common honesty that such agreements should be made in the light of day and in the face of the world. This custom appears to have continued to a late date. Thus, if O'Keeffe the dramatist may be believed, there was in the centre of Limerick Exchange a pillar with a circular plate of copper, about three feet in diameter, called the nail, on which the earnest of all Stock Exchange bargains had to be paid. At Bristol, there are said to have been four pillars called the "nails" in front of the Exchange, the purpose being the same; and similarly, at Liverpool, bargains were completed on a plate of copper, also called "the nail" and standing in front of the Exchange. It is probable, however, as Mr. Gordon observes, that the phrase "payment on the nail" did not originate from circumstances like these, but was an adaptation of the Latin *super unguem* or the French *sur l'ongle*, by which is meant "paying down into a man's hand." It might thus stand for a bargain the opposite of that of which God's Penny was the usual symbol. It appears to have been the custom at Ipswich in 1291 for traders not to make writings or tallies, if two witnesses were in attendance to prove that the undertaking was to pay on a near day *ou freschement sur le ungle.* The notion of immediate payment is still conveyed by the expression, and would cover the entire amount, not merely God's Penny. However, that payment was undoubtedly made "on the nail," and hence some confusion may have arisen, especially in places where plates and pillars were provided for the deposit of earnest money.

In all this there is much to remind us of the Roman *mancipatio*, a method of sale which demanded

the presence of five witnesses, and in which the buyer took possession of his new purchase by holding in his hand a bronze ingot and repeating the formula: "This man [*i.e.* a slave] I claim as belonging to me by right quiritary; and be he [or he is] purchased to me by this ingot and this scale of bronze [*i.e.* that in which the purchase money had been weighed out]."

We have expressed the opinion that the payment of God's Penny was a symbolical act, and this opinion is supported by the fact that there were in mediæval England hand-clasp bargains. Marbeck, a musician and theologian of the sixteenth century, remarks: "As ye see: after all bargaines there is a signe thereof made, eyther clapping of hands or giving earnest." Among the provisions of the Grimsby charter of 1259 is one to the effect that only buyers of the said town might make bargains by hand-clasp for herring or other fish or for corn. To this was added that hand-clasp bargains were to be valid, unless the merchandise, which was the subject of such a bargain, should be inferior to that agreed upon—a question which has to be determined by men worthy of credit. In Shakespeare's *Henry V.* we meet with the saying: "Give me your answer, i' faith, do; and so clasp hands *and a bargain*; how say you, lady?" This recalls that the joining of hands in the marriage ceremony is in the highest degree symbolical; and it is, of course, the common token of faith in friendship. Judging by these parallels, the payment of God's Penny was not less symbolical than its equivalent, the clapping or clasping of hands.

But why was it called "*God's* Penny"? The explanation is fairly obvious to any one who considers

how religion and religious sanctions entered into the most everyday concerns of mediæval life; and this is tantamount to stating—what the reader may have already suspected—that the custom was not confined to England, but diffused throughout Western Europe. *Argentum Dei* was not retained by the pious recipient, but bestowed on some church or religious community. At Waterford God's Penny on ships' freights was given to Christ Church. In such cases the money might be laid out in tapers or expended on works of charity. Mr. Gordon mentions that at Arles St. Trophimus had the benefit. This coincidence of name may suggest a false derivation of "arles," which is a corruption of the Latin *arrha*. Singularly enough, "earnest" seems to have come from the same source through the intermediate forms 'ernes' and 'erles.'

"God's Penny" was perhaps not always devoted to the purpose which the name implies, and this may be the meaning of "other silver" in the Berwick ordinance cited above—not any variation in amount. When a devout application was not proposed, we sometimes hear of the earnest as a "luck penny," and, in connexion therewith, a wetting of the bargain. Thus the accounts of the bailiff of Cuxham, in Oxfordshire (about 1330), show that, having had occasion to travel to London for the purchase of certain millstones, he included in his expenses "the luck or bargain penny, *1d.*; and five gallons of wine for drinks, *2s. 1d.*" God's Penny is a thing of the past, but the last-mentioned method of ratifying a bargain is a custom which, we suspect, is still honoured—not in the breach.

URBAN

CHAPTER XVI

THE MERCHANT AND HIS MARK

IN the course of the preceding chapter reference was made to the illiteracy of our ancestors in its bearing upon trade usages. In the present chapter we propose to supplement this allusion by drawing attention to a feature of commercial life which was certainly influenced by, if not actually due to, the prevailing lack of education. The combination "Merchants' Marks" is so familiar as to suggest that such marks were used by merchants alone. This was by no means the case. Farmers also had their marks. "When a yeoman," says Mr. Williams, "affixed a mark to a deed, he drew a signum by which his land, cattle, etc., were identified"; and in Sussex, we are informed, the post-mortem inquisitions from the time of Henry VII. to that of Charles II. exhibit a large number of yeomen's marks—"other than crosses"—which were employed as signatures. Masons' and printers' marks are further varieties of the same mode of identification.

All these are distinctively trade uses, but the astonishing thing is that, in Germany at any rate, marks were affixed, in conjunction with regular signatures, by ecclesiastical dignitaries and secular nobles, probably as an additional guarantee. They were also

used on shields, and in England were frequently impaled with the owners' arms.

Marks, then, were in no sense the exclusive characteristic of the merchant class; and yet, owing to the fact that these devices were necessarily more used by traders, they may be considered on the whole as belonging to their domain. As we have seen, every baker in the City was obliged to stamp his loaves with his own proper mark; and in other branches of commerce men would value their mark as a means of advertisement. As persons engaged in commerce were commonly debarred from the privilege of armorial bearings, marks were freely employed not only in relation to special callings, but also for ornamentation or commemoration in any and every sphere in which merchants desired to leave the impress of their personality and interest. They were to be found on the fronts of houses, over the fireplace in halls, on seals, on sepulchral slabs and monumental brasses, and on painted windows. In his description of a Dominican convent—printed in full in Prof. Skeat's *Specimens of English Literature* (A.D. 1394–1579)—the author of *Peres the Ploughman's Crede* speaks as follows:

> Than I munt me forth the minster to knowen
> And awayted a wone wonderly well y-built,
> With arches on every half & belliche [beautifully] y-carven
> With crochets on corners, with knots of gold,
> Wide windows y-wrought, y-written full thick,
> Shyning with shapen shields to shewen about,
> With *marks of merchants* y-meddled between,
> Mo than twenty and two, twice y-numbered;
> There is none herald that hath half such a roll,
> Right as a ragman hath reckoned them new.

Another circumstance has to be noted—namely,

that merchants' marks were entirely distinct from shop signs, such as that of the Golden Fleece, which, though serving the same purpose of aiding or enlightening the unlearned, were more pictorial in character. Dr. Barrington, in his *Lectures on Heraldry* defines merchants' marks as "various fanciful forms, distorted representations of *initials of names*," which, he says, were "placed upon articles of merchandise, because armorial ensigns could not have been so placed without debasement." Merchants' marks, however, were so nearly allied to armorial bearings as to elicit from the writer of a Harleian MS. the elucidation: "They be none armys, but a marke as marchaunts vse; for everye manne may take hyme a marke, but not armys, without an herawde or percyvaunte." In this connexion we may note that coat-armour was not entirely barred by the fact of a man being a merchant, for the first Mayor of Hull, William de la Pole, who was addressed by Edward III. as "dilectus mercator noster" and "mercator Regis," used arms that were transmitted to his noble descendants. Another Hull merchant, John Tutbury, who was twice Mayor of the town (in 1399 and 1432), had a coat of arms as well as a mark, and these were figured on separate escutcheons in many places in attestation of his liberality. According to Mr. Thomas Sheppard, F.S.A., only one instance has survived the wreck of the Reformation—that carved in woodwork on the south side of the chancel of Holy Trinity Church. Sometimes a mark was associated with the arms of the Merchant Adventurers, and, where this was the case, it showed that the possessor of the mark was a member of that company.

To those merchants who had no arms—and they were doubtless the vast majority—the mark served

as a substitute, and was regarded with the same feelings of pride and attachment as the ensigns of the nobility and gentry. But unquestionably its chief value was strictly commercial, as is proved by an instance of litigation in the twenty-second year of Queen Elizabeth's reign, which is thus narrated by Mr. Justice Doddridge: "An action was brought upon the case in common pleas by a clothier, that, whereas he had gained reputation by the making of his cloth, by reason whereof he had great utterance to his great benefit and profit, and that he used to set his mark to his cloth, another clothier, perceiving it, used the same mark to his ill-made cloth on purpose to deceive him, and it was resolved that an action did lie."

Merchants' marks appear to have been especially common in towns depending on the manufacture of wool. It so happens that one of those towns was that in the immediate neighbourhood of which these chapters were written; and, agreeably to what has been stated, the Church of St. Peter, Tiverton, which owed much to the munificence of the old merchants, carries a number of such marks. East Anglia is particularly rich in such marks, as is shown by Mr. W. C. Ewing's papers in the *Transactions of the Norfolk and Norwich Archæological Society* (vol. iii.). Mr. Dawson Turner in his Historical Introduction to Colman's *Engravings of Sepulchral Brasses in Norfolk and Suffolk*, after stating that merchants or burgesses were probably the only classes except the military that were represented on monuments, goes on to observe that "these are chiefly to be found in borough towns or the parochial churches of large commercial counties where the woollen manufacture flourished." And, as we have pointed out, the

merchant's mark very often accompanied him to his grave.

We have now reached the borderland, where from urban customs we pass to those of the country; and it will form a natural transition if we conclude the chapter and the section with some remarks on the rural use of marks, which is still common in regard to stock. In this connexion they are generally styled yeomen's marks; and, from the circumstances of the case, it seems certain that the adoption of such symbols took place on the farm long before they were employed on the mart. This being so, it is difficult to avoid the vexed question—what was the origin of marks? As far as the towns are concerned, we might be satisfied with the explanation supplied earlier in the chapter, that they were distortions of the initial letters of the owners' names; but it would not be surprising if yeomen, not being so far advanced in the scale of civilization, employed marks of a more heraldic and less literary type. In the *Dictionarium Rusticum, Urbanicum & Botanicum* (1717) we find the following definition:

"TO MARK SHEEP: This is done with a Marking-Iron, either by the Letters of the Owner's Name or some other Device, dipt in hot Pitch or Tar, and clapt on some Part of the Sheep, which will abide there to make them known and distinguished from others: Some mark them with Ruddle and set ear-marks."

As instances of "other devices" may be mentioned an old Oxfordshire mark called the "peel" (*i.e.* baker's shovel), which has been confused with the warming-pan, and is found also in Sussex, where it is known by the mysterious name of the "doler"; and the "anchor," which is still employed as the

brand of Sir Thomas Acland's breed of Exmoor ponies, and occurs in Germany. The point has been raised whether so-called "pictorial marks" are, and have always been, nothing more than rude drawings of familiar objects. Mr. J. H. Scott has dealt with this problem in an examination of Homeyer's theory that marks were originally runic forms, and he expresses the opinion that, assuming this to be true of certain types of marks, "they lost their character at an early period and were regarded merely as signs or symbols not as letters of an alphabet." As regards "pictorial marks," he holds that the similarity to various objects is accidental. If so, this is rather in favour of Homeyer's derivation of marks from runes, the forms in some cases being identical. Moreover, as Homeyer notes, "signa" for identifying cattle, horses, trees, clothes, and as boundary marks, are referred to in the Lex Salica, the Edictum Rotharis, and the Anglo-Saxon laws, so that we have here something like a pedigree of the custom.

As the definition above quoted proves, there were two methods of marking sheep and cattle. Ear-marking was, and is, effected by "bitting out" of the ear a figure, or cropping, halving, or quartering the ear. The other method, which is mentioned by Fitzherbert, a well-known sixteenth-century authority, was that of daubing the sheep with pitch or ruddle, and usually the outlines would not be very distinct. The eighteenth-century flockmasters in the south of England had, however, a variety of marks of a geometrical or pictorial character, such as a circle enclosing a cross and crossed hooks, both of which, as Mr. Scott points out, may be paralleled by Continental examples.

RURAL

CHAPTER XVII

RUS IN URBE

URBAN customs appear of more interest and importance than rural usages by reason of the greater complexity of relations implied by the interdependence of members of a populous community. In the country the organization of society is more simple, and the life of the fields, if more tranquil, must always be less vivid, and, if the term may be allowed, less conscious than that of the town. Nothing, however, is more certain than that the formation of towns came after and was in most instances the progeny of rural conditions. It is an amazing circumstance that not until the middle of the last century did the great city of Manchester emancipate itself from the last traces of feudal subjection by the purchase of manorial and market rights. Just as the word *pecunia* is derived from *pecus*, just as the merchant's mark is in all likelihood descended from that of the yeoman, even so in many municipal appointments there is strong evidence of the once all-prevalent agricultural element.

If we turn to London, we shall discover that its

administration was conducted, to a large extent, on country and manorial lines. The necessary result was chaos. As Mr. J. H. Round observes, "the genius of the Anglo-Saxon system was ill adapted, or rather wholly unsuitable, to urban life . . . while of unconquerable persistence and strength in small manageable rural communities, it was bound to, and did, break down, when applied to large and growing towns, whose life lay not in agriculture, but in trade. In a parish, in a hundred, the Englishman was at home, but in a town, and still more in such a town as London, he found himself at his wits' end." But the practical spirit, the common sense of our race, successfully asserted itself—*e.g.*, in the case of the Sheriffs, who in London are elected by the citizens. In general, sheriffs are appointed by the Crown, and, as the name implies, they are strictly county officers. In the case of the special franchise of the Fitzwalters, we have seen how eagerly the Corporation embraced the opportunity afforded by the sale of Baynard Castle to secure greater freedom and homogeneity in the government of the City.

Subordinate to the sheriff in the administration of a county are various classes of bailiffs; and the bailiff bore to the lord of a fee much the same relation as the sheriff did to the King. For one or other of these reasons the mayors of provincial towns were, in the early days of local autonomy, termed bailiffs. By a charter granted in 1200 King John permitted the citizens of Lincoln to elect two of their number "well and faithfully to maintain the provostship (*præposituram*) of the city." Twenty-two years afterwards the persons holding this office were called upon to represent the city in a dispute with the burgesses of Beverley—"Ballivi

civitatis Lincolnie summoniti fuerunt ad respondendum burgensibus de Beverlaco." The record continues: "Et Major Lincolnie et Robertus filius Eudonis ballivi Lincolnie veniunt et defendunt, etc." Maitland, in his edition of Bracton's *Note-Book*, in which these particulars occur, suggests that the name of one of the bailiffs has been omitted, but Mr. Round is doubtless right in holding that the senior bailiff was the "Mayor of Lincoln." Stevenson's "Report on the Gloucester Corporation Records" (9th Appendix to the 12th Report on Hist. MSS.) renders it certain that the titles were interchangeable. "A noteworthy circumstance," he says, "is that although the office of Mayor of Gloucester was not created until 1483, one Richard the Burgess is frequently described in the witness clauses as "tunc Majore de Glouc." The dates of these deeds range between *circa* 1220 and *circa* 1240. Sometimes this appears to be the title of the senior Bailiff, as Richard Burgess and Thomas Ouenat are described as Bailiffs in a deed *circa* 1230, but in another deed of the same date Burgess is called 'Major' and Ouenat 'Bailiff.'"

In some boroughs the old royal officer, the Portreeve—the title is a hybrid compounded of the Anglo-Saxon *gerefa* and the Latin *porta* (not *portus*), alluding to the gate, where the markets were held—bore sway. At Tiverton, which was incorporated in 1614, the offices of Mayor and Portreeve existed side by side, and down to the year 1790 the latter exercised the power of summoning certain people to attend the septennial perambulation of the Town Lake—a stream of water, the property of the inhabitants. On such occasions the Portreeve completely effaced the

Mayor, who is not mentioned by name in connexion with the proceedings. The following extracts from a record in the Court Leet books of the proceedings on September 1, 1774, will demonstrate that the celebration, which took place entirely within the confines of the borough, was a survival of a state of things anterior to the grant of a charter.

"A procession and survey of the ancient rivulet, watercourse, or town lake, running from a spring rising near an ash pollard in and at the head of a certain common called Norwood Common, within the said Hundred, Manor, and Borough to Coggan's Well near the Market Cross in the town of Tiverton aforesaid, belonging to the inhabitants of, and others his Majesty's liege subjects, living, sojourning, and residing in the town of Tiverton aforesaid, for their sole use and benefit, was made and taken by Mr. Martin Dunsford (Portreeve), Henry Atkins, Esq. (Steward), Thomas Warren and Philip Davey (water bailiffs) and the Rev. Mr. William Wood . . . and divers other persons, free suitors, tenants and inhabitants of the said town, parish, and hundred of Tiverton, by the order of the honourable Sir Thomas Carew, baronet, Dame Elizabeth Carew and Edward Colman, Esq., Lords of the Hundred, Manor and Borough aforesaid, the first day of September in the year of our Lord one thousand seven hundred and seventy-four.

"The Portreeve and Free Suitors, having adjourned the Court Baron, which was this day held, proceeded from the Court or Church House in the following order:—The Bailiff of the Hundred with his staff and a basket of cakes; the children of the Charity School and other boys two and two; the two water bailiffs with white staves; music; Free-

holders and Free Suitors two and two; the Steward; the Portreeve with his staff; other gentlemen of the town, &c., who attended the Portreeve on this occasion; the Common Cryer of the Hundred, Manor, and Borough aforesaid, as assistant to the Bailiff of the Hundred with his staff.

"In this manner they proceeded at first to the Market Cross, and there at Coggan's Well, the Cryer with his staff in the well made the following proclamation in the usual and ancient form,—'Oyéz! Oyez!! Oyez!!! I do hereby proclaim and give notice that by order of the Lords of this Hundred, Manor, and Borough of Tiverton, and on behalf of the inhabitants of this town and parish, the Portreeve and inhabitants now here assembled, publicly proclaim this stream of water, for the sole use and benefit of the inhabitants of the town of Tiverton and other his Majesty's liege subjects there being and sojourning, from the Market Cross in Tiverton to Norwood Common.' They then proceeded in the same order through the Back Lane, in every part as it ran and through the ancient path of the water bailiffs time out of mind and made the like proclamation at the following places. . . . The Portreeve and free suitors and others that attended them in their way noted every diversion and nuisance that seemed to affect the Lake, and afterwards returned to Tiverton and dined at the Vine Tavern, where they gave the following charity children and other poor boys that attended them twopence a-piece. . . ."

These duties are now performed by the Mayor and Corporation, but the custom was observed in the traditional manner at least as late as 1830. We have ascertained that not only did the Portreeve take the lead on these occasions, but, like the Mayor

and other members of the Corporation, he was *ex officio* guardian of the poor of the town and parish—a privilege which he shared with them alone. We have here, therefore, an instance of dual authority lasting well into the nineteenth century, or nearly six hundred years after London had purged itself of the feudal element in its administration. To appreciate its full significance we have to remember that there existed, side by side with corporate towns, others which were not actually corporate, but were known, nevertheless, as free boroughs or liberties, the reason being that the owners of tenements in them held of the lord by burgage tenure in the same way as the freemen of Liverpool held of the King, and that there were manorial courts, which exempted the burgesses from the jurisdiction of the Sheriff's Hundred Court, the Sheriff's County Court, and even the higher courts of the Crown.

The executive officers, the Portreeve and the Bailiffs, exercised functions probably as old as the borough itself, and therefore, in almost every instance, to be traced to the freer times preceding the Norman Conquest. Stoford, in Somerset, a good type of such a town, retained its constitution until the middle of the eighteenth century. In the reign of Edward I. it included no fewer than seventy-four burgages; and the burgesses set such store by their privileges that they would not permit an inquisition to be taken by the jury of the county save in conjunction with a jury of their own. The borough had a guildhall, the "Zuldhous," for which a rent of 2*s.* was paid to the lord of the fee by certain representatives of the "Commonalty." Commenting on this circumstance, the late Mr. John Batten, F.S.A., remarks: "It proves that the burgesses had not

acquired the true element of a corporation, by which the Guildhall would have passed by law to the members for the time being; but that it was necessary to convey it to certain persons as feoffees or trustees." Stoford, however, had its official seal, bearing the ungrammatical, but intelligible, legend,

S. COMMVNE BVRGENTES STOFORD.

This may seem rather an example of *urbs in rure* than of *rus in urbe*, for it was on such half-emancipated towns that corporate boroughs like Hereford looked down (see above, p. 208), and precisely because of their subjection to a lord. Stoford, and similar places, were deemed, and were, wholly, or almost wholly, rural, and the real question is how far the term *urbs* is applicable to them. As used in this connexion, it is intended to denote precisely what the term "borough" did in its widest signification—namely, a self-governing community; and the "free" but non-corporate boroughs were clearly more allied to ordinary manors than to towns and cities priding themselves on their independence.

The terms "portreeve" and "bailiff" are extremely familiar, and the offices they denote are by no means extinct; but, in addition to these functionaries, there has been perpetuated a whole family of minor ministers even more closely associated with the agricultural aspects of town life. Mr. G. L. Gomme, F.S.A., so well known for his labours in various fields of antiquarian interest, has devoted particular attention to this matter, and for what follows we are indebted entirely to his industrious research. He points out that "the old village community was organized and self-acting," and "possessed a body of officers and servants which made

it independent of outside help." These officers and servants were, in fairly numerous instances, retained long after the village had outgrown its primitive limits. In quite a variety of places we meet with pound-keepers, pound-drivers, and pinders; and the hayward also has been found in as many as fifteen different towns. In the same list are included the brookwarden of Arundel, the field-grieve of Berwick-on-Tweed, the grass-men of Newcastle-on-Tyne, the warreners of Scarborough, the Keeper of the Green-yard in London, the hedge-lookers of Lancaster and Clitheroe, the mole-catcher of Arundel, Leicestershire, and Richmond, the field-driver of Bedford, the herd, the nolts-herds, the town swine-herds of Alnwick, Newcastle, Shrewsbury, and Doncaster, the pasture-masters of Beverley and York, the moss-grieves of Alnwick, the moormen and mossmen of Lancaster, the moor-wardens of Axbridge, the fen-reeves of Beccles and Southwold, and the woodwards of Havering and Nottingham.

It will occur to most people that, if these offices were maintained, the reason must have been something more than the mere force of conservatism, great as that has been in the steady evolution of English life; and such was undoubtedly the case in most of, if not all, the cases cited. In other words, the townsmen, individually, as a body, or in the persons of a limited number of elect, continued to enjoy certain rights, and to hold a financial stake, in the soil surrounding that on which their town was planted. The officers were often paid not in cash, but in kind, either a quantity of grain being allotted to them, or a piece of land. The latter form of remuneration, which was the more common, is exemplified at Doncaster, where

there is a field called the Pinder's Balk, which the pinder cultivated for his own profit. At Malmesbury, it appears, he occupied the position of honour held in other towns by the Mayor, and his salary is represented by a piece of land called the Alderman's Kitchen. To these examples—Mr. Gomme's—may be added the case of Tiverton, where in former days the Mayor had not only what was termed the Mayor's Tenement, situated in the rural part of the parish, but a mill, in which the malt consumed by the victuallers was required to be ground—a privilege for which they paid 2*d.* a bushel to the Mayor, who applied these perquisites to the support and splendour of his office.

Let us now turn to the communities themselves. At Nottingham resident burgesses have a right, falling to them in order of seniority, to the "burgess part"—*i.e.*, a piece of land, either field or meadow, for which each pays a small ground rent to the Corporation.[1] These "parts" number 254, and they are of varying value, so that, as Mr. Gomme puts it, they constitute "a sort of lottery." At Manchester there are 280 allotments, each about an acre in extent, in which all the commoners have an interest. To forty-eight landholders is assigned an acre each, and twenty-four assistant (?) burgesses have each of them an additional acre. At Berwick-on-Tweed there are two portions of land, of which one is demised, under the name of "treasurer's farms," by the mayor, bailiff, and burgesses to tenants. The other part includes sundry parcels called meadows

[1] This and the whole of the following evidence, with few exceptions, was derived from the appendices to the reports of the Municipal Corporations Commission of 1835; and it is not likely that the state of things thus revealed continues, in all cases, to exist.

ranging from 1¼ to 2½ acres; and every year at a meeting of the burgesses—the "meadow-guild," as it is termed—the lands vacated by the death or departure of those last in occupation go to the oldest burgesses or burgesses' widows eligible by residence, the right of choice depending on seniority.

The land belonging to the Corporation of Langharne is similarly allocated. When an occupier dies, the profits accruing from his share are kept by his representatives, and at the ensuing Michaelmas Court the burgess next in age to the deceased is presented by the jury, and obtains the share previously held by him. Mr. Gomme points out that the reverence for age discoverable in so many of these customs is characteristic of the Teutonic races and of primitive communities in general. An interesting feature of this case is that corn is sown in 330 acres for three years in succession and during the next three years they are grassed out.

Proceeding to Clun, in Shropshire, there are in various parts of the manor and forest nine fields comprising in all some 1500 acres of arable land and 200 of forest. The burgesses lay claim to a former exclusive possession of these undivided lands, and, as a matter of fact, practise the right of depasturing their stock on them. In 1690 that right was contested, and the bailiff of the corporation then produced certain minutes, of which the first was as follows: "I measured out our burgesses' undivided lands and ploughed ye same, and are two miles in length from Cumyfrodd to Ronderengereth, being in all nine fields."

The heading of the chapter is *Rus in Urbe*, and, still following Mr. Gomme's guidance, we have now to trace a transition that occurred in the use of these

public lands as the urban element became more and more preponderant. It seems that while there are boroughs with common pasture only, there has been found no instance of a borough having arable and meadow allotments, and no common pasture. The inference is that, as the community grew more addicted to mercantile pursuits, they were less able to devote themselves to the cares of husbandry, and, accordingly, the lands ceased to be cultivated. But they were still of considerable value for grazing purposes. The merchants' cattle and horses might be placed in them—the latter, perhaps, being subsequently entered in the service of trade. Existing arrangements in boroughs which have abandoned agriculture afford clear indications that at one time allotments were carried out and rules enforced with regard to cultivation and the annual crops.

In early days common of pasture was of two kinds—for a restricted period over fields and meadow lands, and over the commons perennially. Both varieties occur at Nottingham, where forest and common are commonable all through the year, while fields are commonable from August 12 to November 12, and meadows from July 6 to August 12 and from October 12 to November 24. Every burgess or occupier of a toftstead enjoys this right. At Chippenham stock may be sent to the meadow after the grass has been cut, whereas the common land, called Englands, are at the disposal of the freemen throughout the year. On the other hand, there is in some boroughs no limit of pasture, but perpetual commonage of field and meadow, which is evidence of complete absorption of ancient landmarks which must have existed. Lancaster Marsh

is known to have been at one time a stinted pasture, which was enclosed in 1796, but the freemen still reap an advantage from it, since they share the rents, which are called marsh-grasses. At Beccles, Dunwich, Great Grimsby, and elsewhere, the two systems are associated, stretches of arable and meadow lands being let at rack rentals, but in parts the right of common pasture by the freemen is reserved. At Great Grimsby leases are granted to freemen alone, while at Beccles they are only of an annual character.

The history of many towns shows that they formerly enjoyed rights of common which they no longer enjoy, and the manner in which these became lost is in numerous instances a mystery. When, from being lands of which the tenants were virtually seised for life, they passed through some evolution into being the property of the corporation let to freemen or others as the case might be, they might not improbably be sold for the good of the community at large. In earlier days the right may have been surrendered by timid or ignorant townspeople under the pressure of a local lord of the manor strong enough to set the law at defiance, or a compromise may have been effected between him and those in temporary enjoyment of the benefit. These, as we have observed, sometimes consisted of no more than a fraction of the inhabitants, and, as the population increased, this would be a diminishing fraction, with the result that outsiders would be apathetic regarding the fate of the common. Where there was a special qualification, it was not necessarily seniority. At Huntingdon, for example, it was the freemen dwelling in "commonable" houses who were privileged to use the common.

There were other restrictions than those already named. In the locality just mentioned "commonable" burgesses, if we may imitate their manner of speech, might depasture two cows and one horse from Old May-day till Martinmas, and four sheep from Martinmas till Candlemas. At Coventry, in what are called Lammas lands, the allowance is two horses and one cow. How very wise and necessary these limitations were may be gleaned from the following extract from a decree in Chancery in 42 Elizabeth. The bill—we have modernized the spelling—recites that

"Divers years past sundry godly and well-disposed persons having commiseration of the poor estate of the said town and parish, did in sundry times in divers kings' reigns assure certain lands, tenements, rents, common of pasture, profits of markets and fairs and other annual commodities under divers and sundry persons for the ease and relief of the same poor inhabitants of the said town and parish, and namely one William, sometimes Lord of the Town and Borough of Torrington Magna aforesaid, by his deed did assure unto the free burgesses of the said town, and some others of his free tenants of his said manor dwelling in the parish of Torrington aforesaid, common of pasture for their beasts and cattle in and throughout his waste grounds within his manor of Great Torrington, lying within the aforesaid parish and known by divers names there, by the name of the Wester Common and one other by the name of Hatchmoor Common with others, which waste grounds in the whole do contain about five hundred acres of land and are lying very near adjoining to the said town on each side thereof, the which hath been and so might continue and be very profitable and commodious for all

the poor inhabitants of the said town and other free tenants of the said manor that by the same grant ought to have common of pasture therein, if the same were used in any reasonable rate or with any indifferency according to the good and charitable mind and intent of the said granter thereof, but in what form or what the words of the deeds are the said complainants could not express.

"They, or some of them [the defendants], do continually oppress and surcharge with their beasts, sheep, and cattle the common grounds, so as the poor inhabitants cannot well keep a cow or horse thereupon for their use and commodity in any good estate, whereas if the same were used with any indifferency according to the true intent of the donor thereof, every inhabitant within the said town that hath any ancient burgage to which the said common of pasture was granted might well keep two kine or a cow and a gelding or a horse beast with little or no charge. All which was devoured and eaten up by six or eight of the richest greedy persons of the same town and the inhabitants thereof."

But the benefit of common was sometimes not merely attenuated by the action of a powerful and covetous few, but, as was before observed, wholly or partially lost. The following passage from the same bill throws some light on the point.

"And also the said Roger Ley under colour of a lease, which he himself with the residue of his consorts made of certain tenements, parcel of the said lands and tenements, unto certain of the children of the said Ley wherein he had cunningly inserted parcel of the same common ground contrary to the knowledge and weeting of the residue of his cofeoffees or some of them had entered upon parcel of the said

common ground called Hatchmoor or lying in Hatchmoor, wherein the said complainants, having burgages within the said town, and all other that dwell in the ancient burgages or dwelling-houses within the said town, ought and had used time out of mind to have common of pasture, without any colour of lawful right had enclosed and tilled two parcels thereof containing about fourteen or sixteen acres and made divers leases thereof to persons unknown, and had shut up an ancient lane or way, commonly called Dark Lane, leading from the said town to the said common of Hatchmoor, through which the inhabitants of the said town had always time out of mind, until the said enclosure, used go and drive to the said common, to the great hindrance, hurt, and damage of the said complainants, and to the disinherison of the said town for ever."

That towns, and even great towns, abode by the traditions of country life, is now abundantly manifest, but the indications above given shed only partial light on rural conditions in their earliest and fullest form. These will furnish the theme of the following chapter, which, it is hoped, will furnish the clue to much that is mysterious in the data thus far supplied.

RURAL

CHAPTER XVIII

COUNTRY PROPER

THE state of things exhibited in the previous chapter is essentially transitional. What we have there seen is the town emerging out of the country, or, to put it another way, the country merging, through the principle of attraction, into the focus of the town. This method of viewing the subject is necessarily partial and incomplete. The existence of a common in association with a town or village or group of villages, is not a self-evident proposition, to be taken for granted. It is clearly part of a system which it now becomes our business to investigate.

To all appearances many of the arrangements found in the course of, and to the close of, the Middle Ages, and even (in a decaying and disappearing form) almost to our own generation, were descended from that wellnigh immemorial antiquity, in which our forefathers were colonists in what was to them a new world—a world of forest and of fen, of man-eating beasts, and alien foemen as fierce or fiercer than they. These conditions determined the course of action of the men who lived under them. For safety, men of one blood dwelt together in a stockaded village or tún. They and their stock, however, had to subsist on their labour and the

bounty of the earth; and therefore around the village a tract of cultivable land was appropriated to the use of the community. Until some degree of security was attained, it was futile to dream too much of individual rights; the inhabitants would have been only too glad of the co-operation of their neighbours, and, whilst some worked, others no doubt stood to arms. Within this area seem to have lain fenced fields for the shelter of calves and other young animals, but this was probably the only exception. Beyond the arable land lay a ring of meadow land; beyond that the stinted pasture; and beyond that again, the forest or waste.

By the term "common" is generally understood common of pasture; it is not unusual to meet with the phrase "cow commons," as though cows were the principal, if not the sole, objects which rendered commons of service. This may well have been the case in later times. In early days, however, there went along with it common tillage, examples of which are still to be found on the Continent. Traces of the openfield system exist also in various parts of England, notably between Hitchin and Cambridge, where there are huge turf balks dividing the fields. It is said that within the last century the country lying between Royston and Newmarket was entirely unenclosed, and till quite late in the century parishes like Lexton, in Northamptonshire, retained this characteristic. Other examples occur at Swanage in Dorset and Stogursey in West Somerset.

Borough English

Before proceeding to describe the methods of cultivation employed, it is desirable to glance at

a custom which, there is reason to suppose, is connected with that remote period when the English were not *de jure* masters of the soil, but occupied the position of colonists, who either expropriated the original inhabitants or entered upon possession of land as *res nullius*, to which they had established no solid claim by prescription. We have already referred to that valuable repertoire of national customs, so judiciously edited as to merit the higher praise *in*valuable—the Year-Books. The reports of the pleas in the Common Bench for 1293 include the following:

"One A. brought a writ of entry against B., saying, 'Into which he had not entry except by such an one who had tortiously, &c., disseised his father Robert.' And he laid the descent thus: 'From Robert descended the right, &c., to Adam the present demandant, as his youngest son and heir, according to the custom of such a place, &c.'

"*Asseby:* 'Sir, we tell you that Adam has an elder brother named N., who is legitimate and is alive, and whom they have omitted. Judgment of the omission.'

"*Sutton:* 'Sir, even if he had made a quit-claim to him, yet that could not be a bar to us, because by the custom of the country the youngest shall have his inheritance, wherefore there is no need to make mention of him.'

"*Asseby:* 'Sir, he has brought a writ at common law; judgment if he ought not to be answered at common law, and if he (the demandant) can allege the custom.'

"*Sutton:* 'In many places in England a woman demands her dower by the writ "Unde nihil habet," which is a writ at common law, and yet, according

to the custom of the country, she will recover for her dower a moiety of the tenements which belonged to her husband, where by common law she would have only the third part, and also in the case of tenements in some countries which are holden by knight-service the lord can avow the taking as good for cornage according to the law of the country; and yet the writ is at common law. And also in Gavelkind according to the custom [of Kent] the younger brother shall have as much as the elder; and yet one brother shall recover against the other brother by right "De rationabile parte," and by the "Nuper obiit," which are writs at common law. ··So in the present case.'

"*Metingham* [the judge]: 'Asseby, answer.'"

Now what was this custom? It is that known as "Borough English," and the reader will have already inferred from the report of the action that, wherever it prevailed, the youngest son claimed to succeed to his father's estate. It is therefore the antithesis of the right of primogeniture, whereby real estate falls to the eldest son. An old record given to print by the late Mr. Robert Dymond, F.S.A., exhibits in great detail the customs of the Manor of Braunton, in Devonshire, and among them is that of Borough English, or, as it is termed in local parlance, "cradle-land." This testimony is of peculiar interest, since the document comprises a provision for the assignment of the property in the not wholly improbable event of the family consisting entirely of daughters. The section touching upon Borough English is thus formulated:

"HEIRS OF THE YOUNGEST HOLDING

"*Item*, the Custome ys in every of the sayd manors that if eny manner of person or persons be seased of

eny manner of land or tenements, rents or premises of the yonger holdyng liying withyn eny of the seid manors or liberties in fee symple or in fe tayle, in demeane or in usu, and have divers sonnys by dyvers venters, viz. by dyvers wyvys, or women by divers men, and dye, that then the yonger son of them shall inherite the seid lands and tenements with other the premyses in fe symple as in fe tayle that so descendith in the seid yonger holdyng in demeane or in use, except ther be any other estate made & proved to the contrary by wryting & if the[y] have no yssue butt all doughters that then the seid inheritance [is] to be parted betwene theym except any lawful wryting or state made to the contrary after the custom."

Neither of these rules of succession was in any way confined to the West of England. Indeed, the late Mr. T. W. Shore, who appears to have been quite an authority on the subject, affirms that "in a general way it may be said that the further we go from Kent the less numerous become the instances in any county of England." This statement is confirmed by a yet greater authority. "Borough English," says Elton, "was most prevalent in the S.E. districts, in Kent, Sussex, and Surrey, in a ring of manors encircling ancient London, and, to a less extent, in Essex and the East Anglian kingdom." Mr. E. A. Peacock, however, points out that there are in Lincolnshire seven places where the custom is still abiding—viz., Hibaldstow, Keadby, Kirton-in-Lindsey, Long Bennington, Norton (Bishops), Thoresby and Wathall; and he further calls attention to the fact, which is certainly most important, that the custom may be traced over nearly all Europe with the exception of Spain and

Italy, and up to the boundaries of China and Arracan. The German name is *jungsten-recht*; and the practice for which it stands existed, amongst other places, at Rettenburg in Westphalia. How then did it become known as Borough *English*? The reason is suggested by the two sorts of tenure—Burgh Engloyes and Burgh Francoyes—which are found in different parts of the town of Nottingham in the reign of Edward III. Borough English was the native custom which had succeeded in holding its ground against the effects of the Norman Conquest.

As has been said, Borough English was in vogue all around London—at Lambeth, Vauxhall, Croydon, Streatham, Leigham Court, Shene or Richmond, Isleworth, Sion, Ealing, Acton, and Earl's Court. In some of these places—Fulham, Wimbledon, Battersea, Wandsworth, Barnes, and Richmond—the "yonger holding" descended not only to males but to females; and at Lambeth (and at Kirton-in-Lindsey, in Lincolnshire) there existed the identical arrangement which has been found at Braunton, in Devon. This equal division between daughters Mr. Shore regards as an "intermediate stage between Borough English and Gavelkind." The latter is distinctively the "custom of Kent," and signifies that the land was "partible," and inherited by the sons in equal shares, the youngest son retaining the homestead, and making compensation to his brethren for this addition to his share. Borough English and gavelkind, therefore, though not the same, are near akin; and it is an interesting question which of the two was prior to the other. It may be that gavelkind is the older, and that Borough English is a remnant or distortion

of what appears, on the face of it, a more equitable condition of things. On the other hand, gavelkind may have been, so to speak, grafted on a more simple usage which the community, through change of circumstances, had outgrown, and had ceased to possess the same justification as at first.

Why should the youngest son take the inheritance? One explanation is that he was presumed to be least able to provide for himself. This, however, expresses only half the truth. The other half has, we think, been furnished by Mr. Peacock.

"The most popular explanation in the last [eighteenth] century was the calumny known as *mercheta mulierum*, now known as a malignant fable popularized by novelists and playwrights. Another suggestion is that it is a custom that has survived from some prehistoric race; a third that it has grown up at different points. . . ." Mr. Peacock regards the last as the most likely. "It is only when the population becomes relatively dense that land, apart from what it produces, is of any value. A time, however, would soon be reached when land would have a value of its own. The good soil would soon be taken up, and in the days of a primitive mode of culture third-rate land would be valueless. Then the house-father would be forced by circumstances to make provision, ere his death, for the sons sharing the ancestral domain between them.

"Here we have the origin of gavelkind—a form of devolution more widely spread than even ultimogeniture or Borough English. Gavelkind, however, could be but a temporary provision. As the population grew, so it would be absolutely necessary that the young men of the household should make new

settlements for themselves. This fact accounts in its measure for the vast shifting of the population that took place when the Roman Empire was in its protracted death-agony. The torrents of human beings which poured in on the decaying Empire were considered by the older historians as evidence of nomadic barbarism. We, with our present lights, say rather that they indicate a population too dense for their own homes to support.

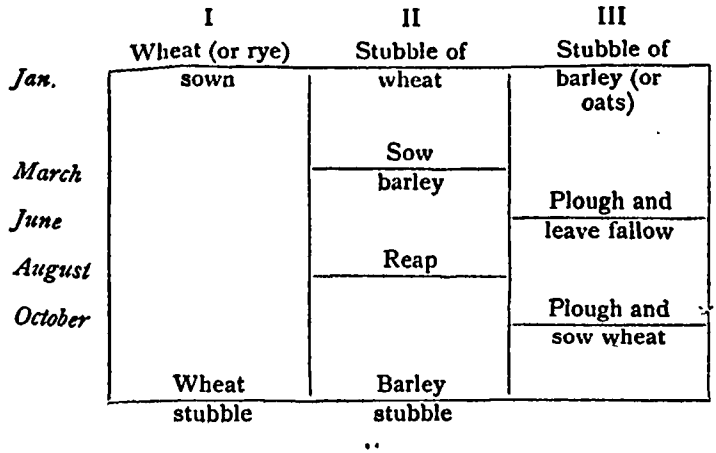
"It would be a matter of course that the elder sons should go forth and carve out for themselves new homes in the West; but when the swarm departed, all the sons would not go forth from the shelter of the native roof-tree. One at least, commonly the youngest, would stay behind. On him would devolve the duty of looking after the old folk and his unmarried sisters. On him would devolve in due time the duties of the sacrifices connected with the sacred hearth; and when the father died, to him would devolve the paternal dwelling, with its ploughlands, its meadow, and its rights of wood and water. Here is, we believe, the key to the origin of Borough English."

The Open Field

We now pass to the methods of cultivation observed in the open field—the conditions of early agriculture. There is reason to believe that at the time of the English settlement extensive tillage must have existed, at any rate to some degree; but this was soon superseded by intensive culture. Certain fields, that is to say, were allocated for the raising of particular crops, the limits being marked by large balks or banks. Besides these arable fields

there was a tract of meadow land, from which the cattle would have been excluded during the time necessary for the growth and carrying of hay. After harvesting operations had been completed, and all through the winter, the cattle were allowed to range at will among the stubble of the arable fields, and over the meadow land, as also over the waste, which was more properly their domain.

As it was impossible to raise crops year after year from the same fields without gravely impoverishing the soil, this system was exchanged in some places for another—that of cropping one of two fields and allowing the other to lie fallow. This modification was not always judged requisite to prevent the exhaustion or deterioration of the land; and thus there arose a third—what is termed the "three-field" system, by which out of three arable fields two were under cultivation at the same time, one lying fallow. The third plan was that which ultimately met with most favour. In the early autumn the field that had lain fallow through the summer was ploughed and sown with wheat, rye or other corn; and in the spring the stubble of the field that had yielded the last crop of wheat was ploughed up, and barley or oats sown in it. The third field, in which the previous crop had been barley, retained the stubble till the early days of June. It was then ploughed up and left in that condition until a fresh crop was sown in the autumn. Professor Cunningham, whose account we here follow, has furnished a convenient chart or diagram which we venture to reproduce as an aid to the comprehension of the subject:



This chart represents one year's labours. In the following year the first field would take the place of the second, the second that of the third, and the third that of the first. The process would be repeated in the third year, and in this way the rotation would continue to be maintained. There were districts in which the three-field ousted the two-field system ; and others in which neither entirely displaced the other. Both eventually gave way to the more modern method of four-course husbandry. The three-field style of agriculture may date back to the remote reign of King Ine, when, it seems certain, open-field cultivation in some form was the rule. This being the case, it was necessary that the fields in which corn and grass were growing should be fenced off for the time being; and one of King Ine's laws has reference to the recognition or neglect of this neighbourly duty:

"If churls have a common meadow or other partible land[1] to fence, and some have fenced their

[1] "Obviously strips in the common arable field" (Cunningham).

part, and some have not, and (cattle stray in and) eat up their common corn or grass; let those go who own the gap and compensate to the others who have fenced their part the damage which there may be done, and let them demand such justice on the cattle, as it may be right. But if there be a beast which breaks hedges, and goes in everywhere, and he who owns it cannot restrain it, let him who finds it in his field take it and slay it, and let the owner take its skin and flesh, and forfeit the rest."

The picture this law presents is that of fields divided by temporary fences, in which, if the three-field system were in use, two would be under cultivation and the third fallow. One great field of thirty acres would have sixty distinct strips with a narrow margin of turf serving in each case as the line of demarcation. To each servile holding in the Confessor's time the landlord assigned a pair of oxen with which to work it; and these may have been combined into a powerful team of eight or twelve, similar to manorial teams, though plough-teams varying in numerical strength are recorded, and the efficiency of some of them may well be doubted.

If there were oxen, it is clear that provision must have been made for their support; and this consisted in the hay from the meadow, in the pasture of the common waste, and that of the fallow field and the other fields in the interval between harvest and seed-time The question whether the tillers were bond or free probably made no difference to the way in which agricultural operations were conducted.

The collapse of this system may be attributed

THE PLOUGHMAN

(From the Louterell psalter (early 14th century))

to the scarcity of labour brought about especially by the Black Death. When men could not be had in sufficient number, the necessary consequence was the expansion of pasture and the contraction of tillage; and this dual process was assisted by the stampede of labourers to the towns and the policy of enclosure to which landowners resorted as a remedy. Deprived of their quit-rents, and not having resources for the payment of wages on an adequate scale, supposing that labour was obtainable on reasonable terms, the landholders fell back upon the only expedients that remained to them. They had land, and they had stock; and, as an escape from absolute ruin, they let the land to tenants, who took over the stock and, probably, as the need arose, replaced it with their own beasts. This revolution, already in full swing in the fourteenth century, paved the way for the present order of things, under which the tenant pays a fixed rent for the use of land and buildings, and finds the capital for farming.

Division into strips was practised not only in the arable fields, but the meadows; and a remarkable survival of this custom is described in Dr. Giles' *History of Bampton* (Oxfordshire). This is of sufficient interest and importance to be quoted entire:

"The common meadow is laid out by boundary stones into 13 (?) large divisions, technically called 'layings out.' These always remain the same, and each 'laying out,' in like manner, is divided into four pieces called 'Sets,' First Set, Second, Third, and Fourth Sets. Now, as the customs of Aston and Coat are based on the principles of justice and equity between all the commoners, and the Common Meadow is not equally fertile for grass in every

part, it becomes desirable to adopt some mode of giving all an equal chance of obtaining the best cuts for their cattle. To effect this, recourse is had to the ballot; and the following mode is practised. From time immemorial there have been sixteen marks established in the village, each of which corresponds with four-yard lands, and the whole sixteen consequently represent the 64-yard lands into which the common is divided. A certain number of the tenants, consequently, have the same mark, which they always keep, so that every one of them knows his own. The use of these marks is to enable the tenants every year to draw lots for their portion of the meadow. When the grass is fit to cut, which will be at different times in different years according to the season, the Grass Stewards and Sixteens summon the tenants to a general meeting, and the following ceremony takes place. Four of the tenants come forward each bearing his mark cut on a piece of wood—as, for example, the 'frying-pan', the 'hern's foot', the 'bow', the 'two strokes to the right and one at top', etc. These four marks are thrown into a hat, and a boy, having shaken up the hat, again draws forth the marks. The first drawn entitles its owner to have his portion of the Common Meadow in 'Set One', the second drawn in 'Set Two', and thus four of the tenants having obtained their allotments, four others come forwards, and the same process is repeated until all the tenants have received their allotments.

"The most singular feature of this very intricate system remains to be told. When the lots are all drawn, each man goes, armed with his scythe, and cuts out his mark on the piece of ground which belongs to him, and which in many cases lies in so

narrow a strip that he has not width enough to take a full sweep with his scythe, but is obliged to hack down his grass in an inconvenient manner, as he is best able."

THE WASTE

We have next to deal with the waste. The meaning of the term is clear—it signifies land which, from the poverty of the soil or other reasons, had never been brought under cultivation. The commons that still survive are mostly of that description, the more valuable land having been resumed during one of the successive periods of enclosure, or—piecemeal.

Originally, there is little doubt, such land belonged to the family or sept, by whom it was used as forest for game or as pasturage for cattle. Unlike the arable field or the common meadow, it was not distributed into sets, but enjoyed in common by all who possessed the right of stocking it. In a genial article in the *Antiquary* describing how the world wagged in his parish of Blewbury, Berks, in the eighteenth century, the Rev. N. L. Whitchurch observes: "There were 'cow commons' on the downs in those days, and a road from the village is still called the 'cow way.' In the early morning a man would collect the various cows of the village, which he drove to pasture for the day. The ancient bell which he rang at the foot of the 'cow road' is still preserved in the village."

In Saxon times the purchase of stock by an individual was a matter of general concern to the community in which he lived. By a law of King Edgar, if a man in the course of a journey bought

cattle, he was required on his return to turn them out into the common pasture, "with the witness of the township." If he omitted to do so within five nights, the townsmen were to acquaint the hundred elder, and the cattle were forfeited, the lord receiving one half and the hundred the other. If the townsmen failed in their duty, their herdsman was subjected to a flogging. For the purchase of cattle the witness of the township was not enough. Twelve standing witnesses were appointed for every hundred, and the buyer had to make it his business to seek out two or three of them so as to secure their presence at the transaction.

The arrival of a stray beast was also a cause of some commotion. The person who found it was compelled by a law of the Confessor to drive it into the township, and, having brought it to the church door, to recount to the mass priest, the reeve, and as many of the best men in the place as could be assembled for the purpose, the circumstances in which he found it. Thereupon it devolved on the reeve to give information to each of the four neighbouring townships, from which the mass-priest, the reeve, and three or four other inhabitants came in due course, and the finder had to tell his story over again in their hearing. On the following day he was required to wait on the headman of the hundred, and place all the facts before him. At the same time he delivered the beast to this authority, unless it had been claimed by the owner, or unless the animal had been found straying within the liberty of a lord having *soc* and *sac*.

Whatever the primitive constitution of society may have been, in historical times three parties possessed an interest in the waste. Blackstone

defines common as "a profit which a man hath in the land of another, as to feed his beasts, to catch fish, to dig turf, to cut wood, and the like." In theory, the waste belonged to the King, who vested portions of it in individual lords or religious houses, and they thus became recognized owners of the soil. In case of outlawry or attainder, the waste reverted to the Crown, which, according to custom, held possession of it for a year and a day. Thirdly, the *use* of the soil, for various specified purposes, resided in the inhabitants of certain townships or hundreds, was appendant to certain tenements, or was reserved as easement on the sale of the land.

Some very interesting questions, arising out of this joint occupancy, were raised in the courts at the close of the thirteenth century—notably the right of search for the object of ascertaining whether there were on the common more animals than any of the parties was entitled to place there, and, if so, of impounding them. Was this right appurtenant to the manor, or was it also appendant to a frank tenement in a particular vill? In one case where the lord had depastured an excess of beasts, the court decided against him, and in favour of a commoner whom he accused of "tortiously" taking his cattle. But, notwithstanding this judgment, there is some uncertainty on the point, as appears from the report of an action tried in the Middlesex Iter of 1294.

"Robert Fitznel brought the Replegiare against Richard, the son of John, saying that he had tortiously taken his beasts in the wood of the Abbat of Horwede, formerly the forest of King Henry, by whom it was given as a chace to N., ancestor of Richard."

"*Warwick:* 'Sir, we offer to aver that Robert and all those who have held the land in N., which he holds have been seised for all time, &c., of the common in the wood where his taking was made as appurtenant to their frank tenement. . . .'

"*Gosefield* imparled, and returned and said: 'Sir, we will tell you the truth of this matter; and we tell you that the place where the taking was made was King Henry's forest; and Henry granted what was the forest to our ancestor by way of chace; and that in that chace, according to the custom of the chace, no person could put to common more beasts than could be fed or wintered on the produce of the land which he held in the same chace; and because Robert brought his beasts from his lands which he held elsewhere, which beasts could not be fed or wintered on the land which he held within the chace, contrary to the usage and custom of the said chace, he (Richard) took them, &c. . .'

"*Warwick:* 'Sir, first of all they avowed the taking, and said that we ought not to have any kind of common; and now they have admitted our right of common partially, viz. as to beasts which can be wintered . . .'

"*Gosefield:* 'The assise of forest is notorious and well-known to all, viz., that no man can have therein more beasts to common than can be fed off the said land.'

"*Warwick* (he spoke then for the King): 'Richard, do you claim to have assise of forest?'

"*Gosefield:* 'Nay, sir. But King Henry granted and gave it to us to hold as a chace in the same manner as he held it while it was a royal forest; and we have three swain-motes yearly for searching and

inquiring whether any one puts more beasts therein than he ought to put; and, inasmuch as King Henry granted it to us to hold like as he held it, it seems to us that there is no need to take the Inquest.'

"*Hertford* [the judge]: 'Do you accept the averment or not?'

"*Gosefield* (being obliged to accept the averment) said: 'Sir, they were never seised of common for more beasts than could be wintered and fed and supported on the growth of the said land.'"

There is appended to this report a note which lays down the law in a different sense from that before stated. It is as follows:

"It is not sufficient for any one who avows distress to say that he avows the taking, &c., for that he found the beasts in his chace of such a place, or in the common of such a place, where he had no right of common; for it may be that neither party had a right of common; and thus it is not sufficient but he must say that he found them in his several pasture, or must say some other thing that touches himself and gives him a right to impound what he found. For no man can avow a distress in a common pasture save the lord of the soil of the common pasture. For if any of the commoners were to make avowry for beasts taken in the common pasture it would then follow that if the Inquest were to pass against the plaintiff, he who avowed the taking in the common pasture would have the return of the beasts and the amends, and not the lord of the pasture, and that would be improper. But this does not hold good where the King is the lord of the common pasture, and several persons holding of him in socage have common, because in that case any one having

common may avow a good distress. The reason is because the King will not be a party in such case or distrein any one."

In mediæval country life, then, commons might be either manorial or forestal. Bishop Stubbs in his *Constitutional History* affirms that "neither the hundreds of England nor the shires appear ever to have had common lands." As regards hundreds, on the enclosure of a common, allotments were made to several townships of Knaresborough, and Stubbs himself allows that "it seems a fair instance of common lands of a hundred." Similarly there is in the hundred of Coleness in Suffolk, a pasture common to all the inhabitants. But in each instance we have probably to distinguish between use and ownership; and the same distinction applies to counties, otherwise the case of the Devonshire Commons might seem to refute the dictum.

The Devonshire Commons are not to be confused with the Forest of Dartmoor. They constitute rather the purlieus, and, in general, afford better pasturage than the forest itself. Neither are they identical with the commons of the separate vills—the manorial or parochial commons. The whole of the inhabitants of the county may be regarded as possessing an interest in the Devonshire Commons, with the exception of the people of Barnstaple and Totnes, the reason being that those districts not having been afforested with the rest of the county, the residents acquired no new privileges when Devonshire was disafforested. The other inhabitants retained whatever rights they had previously enjoyed not only in respect of the Devonshire Commons, but of the Forest of Dartmoor, of which, at some early period —before the era of perambulations, in which they

were not included—those commons had no doubt formed part. One effect of the wide extent of the right of common was that the rule of *levant and couchant* did not obtain here. Naturally, when all Devonshire men were entitled to the use of the land, it was impossible to fix a limit to the number of the beasts that might be turned out throughout the length and breadth of the county.

Mention was made above of royal forests as occupying, in some respects, a different position from other lands in which a right of common was exercised. Dartmoor, although the property of the Prince of Wales as Duke of Cornwall, may be taken as, to all intents and purposes, answering to that description; and thus peculiar interest attaches to the usages which prevailed, and still prevail, within its bounds.

The question of "Venville Rights on Dartmoor" is one that engaged the attention of a very capable writer as well as an accomplished antiquary, the late Mr. W. F. Collier; and although the subject has been handled by other investigators, it is from him that we have derived the bulk of our information on this very remarkable aspect of commonage. First, as to the name. "Venville" is a provincial corruption of *fines villarum*, each vill paying a larger or smaller sum for the right of pasturage; and certain parishes or manors on the outskirts of the forest were said to be "in venville." "The perambulation [of 1224]," says Mr. Birkett, "establishes three important facts: viz., that the moor was originally part of a royal forest; that the Commons of Devon, and surrounding parishes were once part of the forest; and that the moor is not waste of a manor." The townships were grouped into four bailiwicks—

North, South, East and West; and the fines payable compose too long a list to be given entire. The following, however, are specimens: The township of Trulegh (Throwleigh), 2*s.* 6*d.*; the parish of South Tawton, 7*s.* 4½*d.*; the township of Sele (South Zeal), 6½*d.*; the hamlet of Lowyngton, in the parish of Meavy, 2*d.*; the township of Gadamewe (Godameavy), in the same parish, 2*d.*; the township of Chagford, 12*d.*; the hamlet of Teigncombeham, with [within?] the parish of Chagford, 4*s.* This was in 1506–7. In return for these payments the commoners have certain "venville" rights, which extend over the forest proper and the Devonshire Commons, and include the taking of stone and sand for their own use. But the most valued is that of agistment or pasturage, especially of ponies. The Duchy, on its part, claims and exercises the right of "drift"—a picturesque survival on which we may well bestow some regard.

The division of the forest into four quarters still continues, each being in charge of a moorman; and over these wide tracts and the adjacent Commons sheep, bullocks, and ponies are turned out by the tenants to graze at will. In the autumn the animals are driven to a traditional spot, in order that they may be claimed by their owners. There is a bullock drift, and a pony drift, of which the former is the earlier; and each quarter has its own drift days, which are usually different. In any case, no notice is given, but about two o'clock in the morning the moorman is apprised by a messenger that he must "drive" his quarter for bullocks or ponies. Thereupon, according to the regular procedure, he ascends the tors and blows his horn as an intimation to the tenants to assist in the drift. In the western

quarter there was formerly a stone, through a hole in which it was the custom to blow the horn, but this stone now graces a wall in a hedge.

The drift to Merrivale Bridge is accomplished by men on horseback and men on foot, and dogs, to the accompaniment of horns and halloos; and when all the animals have been gathered, an official of the Duchy takes his stand on an ancient stone and reads a proclamation, which done the owners are summoned to claim, let us say, their ponies. The venville tenants identify their beasts, making no payment; but other persons—and in no case, apparently, is the right of pasturage disputed, nearly the whole of Devonshire having been forest—have to render a fine for each animal. They have also to meet a trivial charge for night rest, which is supposed to have arisen from an old custom that debarred any one from remaining on the forest by night, with the consequent temptation to deer-poaching. An unclaimed animal is driven to Dunnebridge Pound and there kept for some weeks, at the expiration of which, if he is still unclaimed, or if the owner refuses to pay for poundage, etc., he is sold for the benefit of the Duchy.

Each quarter of the moor has its peculiar ear-mark for ponies, consisting of a round hole at the base or the tip on the near or off ear, through which a piece of string is tied, there being thus four distinct marks.

Some of these ancient usages have fallen into desuetude. The last occasion on which the horn was sounded was in 1843; and the four quarters are now let to as many "moormen," who endeavour to make as much profit as possible out of them. To this day, however, neither on Dartmoor nor on

the Devonshire Commons, is any man denied pasturage for his ponies or cattle.

BONDMEN

From vills we may naturally turn to those who in ancient days—the word has another meaning now—were named after them *villeins*. More than once in the course of this work we have had occasion to refer to the existence of an unfree class in England, on which prouder and more happily circumstanced persons looked with considerable disdain, and therefore our account would fail of a necessary element of completeness if it omitted to deal, in some measure, with this striking phenomenon of mediæval English life. The subject is too wide and complex to be discussed with any approach to thoroughness, but some aspects of it may be introduced, and indeed *must be* introduced, being, as we have said, complementary to statements of social relationships already set down.

The position of those who rested under the stigma of servitude is brought home to us pretty forcibly by a report of proceedings in the Middlesex Iter of 1294.

"One A. brought a writ of imprisonment against B.

"*Heilham* (for B.): 'He ought not to be answered, for he is our villein.'

"*A.*: 'A free man and of free condition, ready, etc.'

"*Heilham* said as before.

"*Melingham* [the judge]: 'He cannot give a higher answer in a writ of Neifty.'

Heilham: 'We will tell you the truth; his father was our villein, and held of us in villeinage land in the vill mentioned in his count, and where

he was taken ; and he begot this A., and also one B., his brother, of whom we are now seised, as of our villein ; and this A. went out of the limits of the villeinage, and afterwards returned, and we found him at his hearth in his own nest, and we took him as our villein, as every lord may well do ; and we pray judgment.

" *Metingham :* ' If my villein beget a child on my land which is in villeinage, and the child so begotten go out of the limits of my land, and six or seven or more years after return to the same land, and I find him in his own nest and at his own hearth, I can take him and tax him as my villein for the reason that his return brings him to the same condition as he was when he went.'

" *Heilham :* ' He fell into the pit which he hath digged.' "

We must beware of attributing this doctrine of Neifty to the Norman Conquest, which merely supplied names ; in definiteness and cruelty nothing could exceed the practice of serfage under the Saxons. " The slave," says Green, " became part of the live stock of the estate, to be willed away at death with the horse or the ass, whose pedigree was kept as carefully as his own. His children were bondmen, like himself ; even the freeman's children by a slave-mother inherited the mother's taint. ' Mine is the calf that is born of my cow,' ran the English proverb." In the same passage he points out that the number of the serfs was being continually augmented from various concurrent causes—war, crime, debt, and poverty all assisting to drive men into a condition of perpetual bondage.[1] Degradation of freemen into serfs remained

[1] It is difficult to estimate the proportion of bond to free ; Seebohm holds that the former comprised the bulk of the population.

a disagreeable possibility as long as the system endured; and the presumption was always against a man, who, whatever may have been his previous status, was arbitrarily taken and reduced to a state of servitude, in which, *in fact*, he had no remedy at law. Writing in the third decade of the sixteenth century, Fitzherbert remarks: "Howbeit in some places the bondmen continue as yet; the which meseemeth is the greatest inconvenience that is now suffered by the law, that is, to have any Christian man bounden to another, and to have the rule of his body, lands, and goods, that his wife, children and servants have laboured for all their life-time, to be so taken like as and it were extortion or bribery. And many times by colour thereof there be many freemen taken as bondmen, and their lands and goods taken from them, so that they shall not be able to sue for remedy, to prove themselves free of blood. And that is most commonly where the freemen have the same name as the bondmen, or that the ancestors of whom he is comen was manumised before his birth. In such cases there cannot be too great a punishment."

It must not be imagined that the law contained no provisions for meeting the case of persons reduced to slavery in this tyrannical fashion. The villein, who was by right a freeman, was supposed to make his claim to the justices. A writ of *pone* would then issue, directed to the Sheriff, in the following terms:

"Questus est mihi R. quod N. trahit eum ad villenagium de sicut ipse est liber homo, ut dicit. Et ideo praecipio tibi quod si idem R. fecerit te securum de clamore suo prosequendo, tunc ponas loquelam illam coram me vel justitiis meis die, &c.;

et interim eum pacem inde habere facias; et summone per bonos summonitores praedictum N. quod tunc sit ibi ostensurus quare trahit ad villenagium injuste, &c."

On the day appointed the claimant had to produce in court his nearest relations, and if they were proved to be free, it was presumed that he was free also. But if any doubt remained as to the condition of his kinsfolk, the verdict of the vicinage was taken. If, by either of these processes, the claimant established his case, he was adjudged free for ever. This was the theory, but Fitzherbert's words are pretty clear evidence that in practice the machinery was useless where a man had been stripped of all that he had in the world, and was consequently in no position to institute legal proceedings.

The agricultural population actually consisted of three elements. First there was the lord; secondly, his free tenants; and, thirdly, the villeins or serfs. The main difference between the two latter classes was that the free tenants had proprietary rights in their holdings and chattels. They could buy, sell, or exchange without the lord's intervention; and, in the event of a dispute, they could sue him or any one in the courts. Nevertheless, they stood in some degree of subjection to the lord, since the geld due to the state was paid through the lord as responsible to the sheriff for all who held land within the manor.

Another very important distinction between the free tenants and the villeins was the payment of *merchet* on the marriage of daughters, which signified that the offspring of such marriages would be the lawful property of the lord. From this

payment, and all that it implied, the free tenants were exempt.

Predial services, on the other hand, might be rendered as well by free tenants as by villeins. This is shown by an entry in Domesday:

"De hac terra [Longedune] tempore Regis Edwardi tenebant ix liberi homines xviii hidas et secabant uno die in pratis domini sui et faciebant servitium sicut eis precipiebatur."

Much would depend on the capital possessed by the free tenant, who might elect to make good any deficiency by corporal labour. The villein had no capital, and was simply an instrument, like the cattle of which he had charge, in the working of the estate. He was bound to the soil with which all his interests were linked; and he was regarded in the light of an investment, in which the lord had a perpetual stake. It was the lord who furnished him with the means of gaining a livelihood, and, in return for this accommodation, the lord demanded from him, and his children after him, lifelong service.

From the *Rectitudines Singularum Personarum*, an eleventh-century document, we learn that the *cotsetle*, for his holding of about five acres, was required to labour for his lord on one day a week all through the year,[1] and this was known as *week-work*. He had also to give what was called *boon-work*—namely, three days a week in harvest. Another type of unfree tenant was the *gebur*, who held a yardland of some thirty or forty acres, which, upon his entrance, was stocked with two oxen, one cow, six sheep, tools and household utensils. His week-

[1] For the cultivation of the demesne, perhaps a fourth of the entire manor.

work amounted to two or three days a week, as the season required; in winter, he had "to lie at his lord's fold," when bidden; and he had to contribute his quota of boon-work. Certain payments also had to be made.

The obligation to render personal service at definite periods, it can be well understood, was often excessively irksome to the villeins, who, if they could afford to do so, would be only too ready to commute all or part of that service for a payment in money. The extension of this practice must have tended to diminish the interval between the free tenants and the villeins, and, as long as labour was to be obtained in sufficient abundance and on reasonable terms, it might have been equally to the advantage of the lord to receive pecuniary acknowledgment. But, as we have already noted, there was, towards the close of the Middle Ages, a grave deficiency of labour in the country districts, and one of the problems of the legislature was how to retain men on the soil.

The free tenants and the villeins represent the original tillers, but the reader will perhaps have remarked that Fitzherbert, in the passage before cited, speaks of servants in connexion with villeins. If villeins employed servants, the free yeoman must, in many instances, have employed them also. These auxiliaries appear to have known their value, and, on the strength of this knowledge, endeavoured to drive hard bargains. Parliament, over and over again, denied them this privilege, fixing rates of wages and imposing severe penalties—*e.g.* branding—on such labourers as, in the hope of improving their condition, migrated from one neighbourhood to another.

The first attempt to regulate wages was made in the statute of 12 Richard II. cc. 3–7, the preamble of which affirms that "the servants and labourers will not, nor by a long season would, serve and labour without outrageous and excessive hire, and much more hath been given to such servants and labourers than in any time past, so that for scarcity of the said servants and labourers the husbands and land tenants may not pay their rents nor unnethes live upon their lands, to the great damage and loss as well of their lords as of all the commons; also the hires of the said servants in husbandry have not been put in certainty before this time."

The "hires" were now defined, and this act penalized masters who paid labourers at a higher rate than was allowed under it. The scale of wages varied in different reigns. Here we may confine ourselves to the provisions of the statute of 11 Henry VII., which not only determined the maximum payments, but sanctioned reductions on legitimate grounds. Thus regard was had to the current wages in the locality, which the employer was under no obligation to exceed. Less was to be paid at holiday than at other times; and if a man were lazy in the morning or lingered over his meals, he might be mulcted at his master's discretion.

Premising that the purchasing power of a penny in the fifteenth century was about twelve times as much as it is now, we are able to form some idea of the economic position of the different classes, which were the subjects of this legislation. The bailiff, it appears, might have a salary of 26*s.* 8*d.*; the common servant in husbandry cost 16*s.* 8*d.* and 4*s.* for clothes; and the artisan received per day

5*d.* in the summer and 6*d.* in the winter. This brings us to the hours of labour, which depended on the season, and were also regulated by statute. These were from 5 a.m. till between 7 and 8 p.m. from the middle of March to the middle of September, half an hour being allowed for breakfast, and an hour and a half for dinner and a siesta—an indulgence countenanced from May to August. During the winter, the rule was that work was to be carried on whilst there was daylight.

Mention has been made of holidays. These, though inevitable, were evidently regarded as seasons of danger, since the favourite recreations of labourers, if left to their own devices, were poaching and politics. Against "these twin evils the King's counsellors took precautions in an act (13 Rich. II. st. I., c. 13), of which the preamble ran:

"Forasmuch as divers artificers, labourers, servants, and grooms, keep greyhounds and other dogs, and on the holy days, when Christian people be at church hearing Divine service, they go a-hunting in parks, warrens, and coningries of lords and others to the very great destruction of the same, and sometimes under such colour they make their assemblies, conferences, and conspiracies for to rise and disobey their allegiance, &c."

Hence none but laymen with 40*s.* and clerks with 10*l.* were suffered to keep dogs or use ferrets, nets, harepipes, cords, or other engines to destroy deer. Instead of engaging in such perilous diversions, servants and labourers were ordered to "have bows and arrows and to use the same on Sundays and holy days, and leave all playing at tennis or football and other games called quoits, dice, casting of the stone, kailes (skittles) and other

importune games." Swords and daggers were prohibited "but in time of war for the defence of the realm of England"—a wise measure when the country was infested with vagrants and there were so many liveried retainers prompt to resent a real or imaginary affront.

DOMESTIC

CHAPTER XIX

RETINUES

AT the conclusion of the previous section allusion was made to retinues as constituting a danger to the industrious members of the body politic. In this, our final section, we turn, or rather return, from the life of the fields to that of the hall. Some notice of the interior order of great houses has appeared in earlier chapters—*e.g.* that on "Children of the Chapel"—but such special reference, involving no more than the religious side of domestic arrangements, leaves a sense of incompleteness, and this void we must now proceed to fill.

Starting with the peril and annoyance involved in the maintenance of retinues, the proposition may be easily demonstrated. Alike in town and country the presence of armed and idle ruffians was a source of well-grounded apprehension. Thus, when the Bishop of Durham attended parliament, he had to obtain a licence before his retainers could be quartered at Stratford-at-Bow; and the manifold inconveniences produced by these satellites in country districts during the reign of Edward I. forms the subject of a versified complaint, to be found in Wright's *Political Songs*. One of the causes of the grievous scarcity of labour is believed

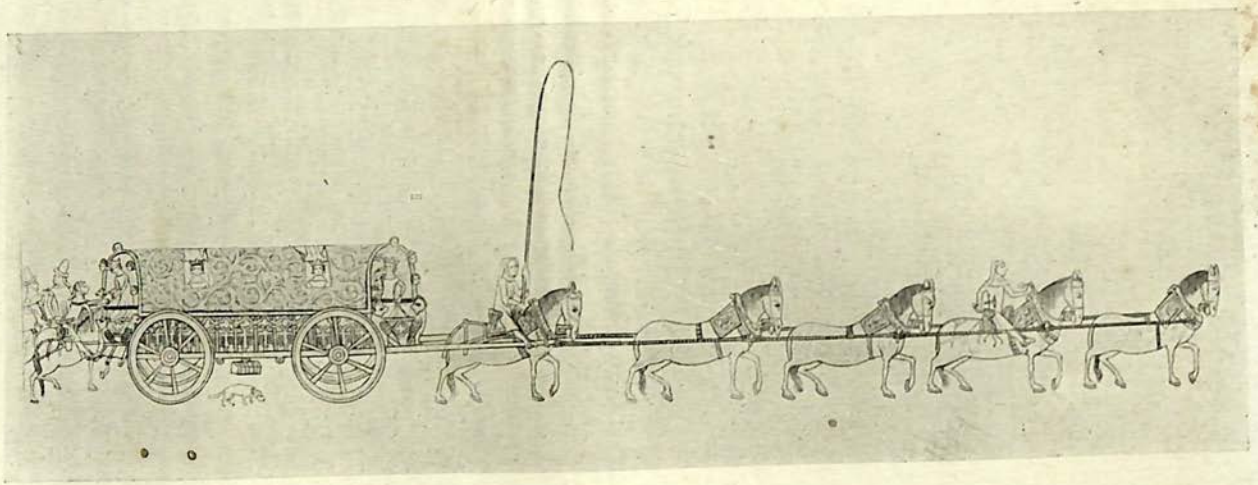
to have been that nobles and others, under the pretence of husbandry, kept in their pay able-bodied dependants who, rather than eke out a miserable existence on the land, preferred to follow some warlike lord.

BILLETING

As usual, the trouble began at the fountain-head. Everybody knows the term "billeting" as applied to soldiers on the march, who are compulsorily quartered on licensed victuallers and others at fixed rates. This is really a very ancient custom, which is closely, and indeed lineally, connected with the topic under discussion.

In the early days of royal progresses it was the duty of the Marshal of the King's Household to secure lodgings for the members of the retinue, which accompanied him; and this he did by means of a billet, by virtue of which he appropriated for the occasion the best of the houses in the vicinity, marking them with chalk and ruthlessly ejecting the occupiers. The Marshal, it may be observed, did not do the chalking himself—a task which seems to have been delegated to the Sergeant Chamberlain of the Household.

Even London did not escape this intolerable vexation, though its immunity from billeting was expressly laid down in a succession of charters. The royal officials, paying scant heed to the sanctity of these clauses, repeatedly invaded the precincts of the City; and in the reign of Edward II. they went so far as to seize the house of one of the sheriffs, John de Caustone, and quarter therein the King's



A ROYAL TRAVELLING CARRIAGE

From the Louterell Psalter [early 14th century

Secretary, sergeants, horses, and harness. The sheriff acted boldly. He erased the chalk marks, and proceeded to expel the intrusive sergeants—perhaps even the Secretary himself, unless, as Mr. Riley thinks probable, that person "walked quietly away." For this resolute vindication of the liberties of the City, Caustone had to answer before the Seneschal and Marshal of the King's Household, sitting in the Tower, but, as there was no excuse for the insolent aggression, he suffered no harm. The citizens, indeed, were so assured of their rights in this particular, that at some date—probably in the reign of Edward I.—an ordinance had been passed:

"That if any member of the royal household, or any retainer of the nobility, shall attempt to take possession of a house within the City either by main force or by delivery [of the Marshal of the King's Household]; and, if in such attempt he shall be slain by the master of the house, then, and in such case, the master of the house shall find six of his kinsmen [*i.e.* as compurgators], who shall make oath, himself making oath as the seventh, that it was for this reason that he so slew the intruder; and thereupon he shall go acquitted."

PRE-EMPTION

The humbler people who escaped billeting might still have cause to regret royal journeys owing to the inconsiderate exercise of the right of pre-emption. Subjects were compelled to sell; and the worst of it was that the King's purveyors were in the habit of paying not in cash down, but by means

of an exchequer tally, or a beating! A tally was a hazel rod which had certain notches indicating the amount due. It obtained its name from the circumstance that these rods were in pairs, the creditor having one and the debtor the other, so that they could be used for the purpose of comparison. In practice it was found no easy matter to recover under this system, which lent itself to the worst exactions, and is the subject of numerous complaints in our early popular poetry. Thus in *King Edward and the Shepherd:*

> "I had catell, now have I none;
> They take my beasts, and done them slon,
> And payen but a stick of tree . . .
> They take geese, capons, and hen
> And all that ever they may with ren
> And reaves us our catell. . . .
> They took my hens and my geese
> And my sheep with all the fleece
> And led them forth away."

Somewhat similarly, when a ship arrived in port with a cargo of wine, the prerogative of *prise* was enforced, whereby the King was entitled to "a tun before and one abaft the mast," or the equivalent in money.

The royal household and those of "the great lords of the land" enjoyed the right of pre-emption not only in the country but in the London markets. Dealers in fish, for example, were not allowed to quit the City in order to meet a consignment "for the purpose of sending it to any great lord or a house of religion, or of regrating it," until the King's purveyors had first purchased what was required for their master's table.

When fish had been brought to the City, no fishmonger might buy "before the good people have bought what they need." It was the same with poultry. Until prime had been sounded at St. Paul's, poulterers were forbidden to buy for resale, the object being "that the buyers for the King and great lords of the land, and the good people of the City may make good their purchases, so far as they shall need."

LIVERY

So much for purveyance. As regards the disposition of the provisions thus obtained, it was expressed by the term "livery," formerly of much wider application than at present. The word comprehended all that was delivered or dispensed by the lord to his underlings or domestics—money, victuals, wine, garments, fuel, and lights; but no doubt it was employed more particularly of external and distinctive garb. The Wardrobe Book of 28 Edward I. and the Household Ordinances show that officers and retainers of the Court were presented with a *roba estivalis* and *hiemalis*. The *livrée des chaperons*, so often mentioned, refers to hoods or tippets of a colour sharply contrasting with that of the garment over which they were worn. Subsequently this mark took the form of a round cap, attached to which was a long liripipe, which might be wound round the head, but more usually hung over the arm. In the dress of the City Liverymen traces of it may still be found.

This suggests the remark that livery was used not by the members of great households merely, but by brotherhoods and *gentz de mester*; hence

it is that Chaucer in his Prologue of the *Canterbury Tales* enumerates

> A Haberdassher and a Carpenter
> A Webbe, Dyere, and a Tapicer;

and says of them :

> . . . they were clothed alle in a liveree
> Of a solempne and great fraternitee.

The statute 7 Henry IV. conceded this privilege to the "trades of the cities of the realm," thus confirming previous acts of the reign of Edward III. and Richard II., which sanctioned the wearing of livery by menials and members of gilds, but prohibited the distribution of badges to adherents who assumed them in testimony of their readiness to aid their patron in any private quarrel. The practice was therefore a grave menace to the King's peace.

The prohibition was renewed 8 Edward IV., c. 2, which inflicted a penalty of one hundred shillings for every person "other than his menial servant, officer, or man learned in the one law or the other," so retained by any one "of what estate, degree, or condition that he be." The fine was to be repeated for every month "that any such person is so retained by him by oath, writing, indenture or promise," and a similar penalty attached to the person retained. But there were many exceptions— "Provided that this ordinance do not extend to any livery given or to be given at the King's or Queen's coronation, or at the installation of an archbishop or bishop, or erection, creation, or marriage of any lord or lady of estate, or at the creation of Knights

of the Bath, or at the commencement of any clerk in any university, or at the creation of serjeants in the law, or by any gild, fraternity, or mystery corporate, or by the mayor and sheriffs of London, or any other mayor, sheriff, or other chief officer of any city, borough, town, or port of this realm of England for the time being, during that time and for executing their office or occupation; nor to any badges or liveries to be given in defence of the King or of this realm of England; nor to the constable and marshal, nor to any of them for giving any badge, livery or token for any such feat of arms to be done within this realm; nor to any of the wardens towards Scotland for any livery, badge, or token of them to be given from Trent northward, at such time only as shall be necessary to levy people for the defence of the said marches, or any of them."

The giving of liveries at the creation of serjeants-at-law was continued until 1759; and the parti-coloured robes worn by the serjeants themselves were often rich presents from rich clients, being known as retainers. Liveries generally were of this character. That of the Duke of Norfolk was of blue and tawny, having the left side of the former and the right of the latter colour.

With regard to badges, the best-known example of the sort is the royal badge—the rose—introduced by Eleanor of Provence, the consort of Henry III., and retained by successive sovereigns to the time of Queen Anne. A rose and crown was worn on the left shoulder by the Yeomen of the Crown (or Crown-keepers), and by the Yeomen of the Guard.

The War of the Roses gives especial prominence

to the employment of badges in feuds between great —in this instance, royal—houses; and it may be noted that the Yorkist badge—the white rose—was adopted by the Jacobites as the emblem of their party. As late as 1754 white roses were displayed at Exeter on the Pretender's birthday (June 7), and the sign of an inn was decorated with them. About a mile from the place where these words are being written stands a wayside inn with the sign of the "Rose and Crown"; and this is only one of a very large number so named in various parts of the country.

A Mediæval Household

The establishment of a great noble or ecclesiastic sometimes embraced a vast category of persons; and if we would learn on what an elaborate scale house-keeping might be conducted by subjects, we cannot do better than turn to Gascoigne's account of Cardinal Wolsey's colossal retinue. After stating that the ambitious churchman had in attendance upon him "men of great possessions and for his guard the tallest yeomen in the realm," he proceeds:

"And first, for his house, you shall understand that he had in his hall three boards, kept with three several officers, that is, a steward that was always a priest; a treasurer that was ever a knight; and a comptroller that was an esquire; also a confessor, a doctor, three marshals, three ushers in the hall, besides two almoners and grooms.

"Then had he in the hall-kitchen two clerks, a clerk-comptroller, and a surveyor over the dresser, with a clerk in the spicery, which kept continually a mess together in the hall; also, he had in the kitchen

two cooks, labourers, and children, twelve persons; four men of the scullery, two yeomen of the pastry, with two other paste-layers under the yeomen.

"Then had he in his kitchen a master-cook, who went daily in velvet or satin, with a gold chain, besides two other cooks and six labourers in the same room.

"In the larder, one yeoman and a groom; in the scullery, one yeoman and two grooms; in the buttery, two yeomen and two grooms; in the ewry, so many; in the cellar three yeomen and three pages; in the chandlery, two yeomen; in the wafery, two yeomen; in the wardrobe of beds the master of the wardrobe and twenty persons besides; in the laundry, a yeoman, groom, and thirteen pages; two yeomen-purveyors, and a groom purveyor; in the bakehouse, two yeomen and grooms; in the wood-yard, one yeoman and a groom; in the barn, one yeoman; porters at the gate, two yeomen and two grooms; a yeoman in his barge, and a master of his horse; a clerk of the stables, and a yeoman of the same; a farrier and a yeoman of the stirrup; a maltlour and sixteen grooms, every one of them keeping four geldings.

"Now I will declare unto you the officers of his chapel, and singing-men of the same. First, he had there a dean, a great divine, and a man of excellent learning; and a sub-dean, a repeater of the choir, a gospeller, an epistler of the singing-priests, and a master of the children: in the vestry a yeoman and two grooms, besides other retainers that came thither at principal feasts. . . .

"Now you shall understand that he had two cross-bearers and two pillar-bearers; in his great chamber, and in his privy-chamber, all these persons, the chief

chamberlain, a vice-chamberlain, a gentleman-usher, besides one of his privy-chamber; he had also twelve waiters and six gentlemen-waiters; also he had nine or ten lords, who had each of them two or three men to wait upon him, except the Earl of Derby, who had five men.

"Then he had gentlemen cup-bearers, and carvers, and of the sewers, both of the great chamber and of the privy chamber, forty persons; six yeomen ushers, eight grooms of his chamber; also, he had of alms, who were daily waiters of his board at dinner, twelve doctors and chaplains, besides them of his chapel, which I never rehearsed; a clerk of his closet, and two secretaries, and two clerks of his signet; four counsellors learned in the law.

"And for that he was chancellor of England, it was necessary to have officers of the chancery to attend him for the better furniture of the same.

"First he had a riding clerk, a clerk of the crown, a clerk of the hamper, and a chafer; then he had a clerk of the check, as well upon the chaplains as upon the yeomen of the chamber; he had also four footmen, garnished with rich running coats, whensoever he had any journey. Then he had a herald of arms, a physician, an apothecary, four minstrels, a keeper of his tents, an armourer and instructor of his wards, an instructor of his wardrobe of robes, a keeper of his chamber continually; he had also in his house a surveyor of York, a clerk of the green-cloth. All these were daily attending, down-lying and up-rising; and at meat he had eight continual boards for the chamberlains and gentlemen-officers, having a mess of young lords, and another of gentlemen; besides this there was never a gentleman, or officer, or other worthy person, but he kept some

two, some three persons to wait upon them; and all others at the least had one, which did amount to a great number of persons.

"Now, having declared the order according to the chain roll, use of his house, and what officers he had daily attending to furnish the same, besides retainers and other persons, being suitors, [that] dined in the hall: and, when shall we see any more such subjects that shall keep such a noble house? Therefore here is an end of his household; the number of persons in the chain were eight hundred persons."[1]

This description points to the utmost magnificence, which we might expect to be accompanied by a proportional degree of cleanliness. It is possible, indeed, that Wolsey's palace was in a more sanitary condition than that of his master, Henry VIII., since he was fastidious enough, when on his way to Westminster Hall, to hold in his hand a "very fair orange," which had been hollowed out to receive a sponge steeped in vinegar and "other confections" as an antidote to the fetid airs of a multitude of suitors. Moreover, he was not without warning as to the danger of an accumulation of impurities, since

[1] It is impossible within our present limits to specify the relative duties of this formidable array of officers and serving-men, although materials for the task are available, notably in "The Booke of Orders and Rules" of Anthony Viscount Montague, printed in vol. vii. of the *Sussex Archæological Collections*. From this we learn that the Steward was expected to keep a "perfect checkroll" of his lordship's household and retainers in order that he might "with more certainty make the proportion of liveries and badges for them." Yeomen waiters attended their master in the streets of London and at his table there in their liveries, with handsome swords or rapiers at their sides; and this was also the rule in the country at the solemn feasts of Christmas, Easter, and Whitsuntide, and on other special occasions. When the Lord and Lady went a journey, the Steward and all the higher members of the household rode immediately in front of them, and the Gentleman Usher led the cavalcade bareheaded through towns and cities.

Erasmus, writing to Francis, the Cardinal's secretary, attributed the plague, then almost endemic, to the foul condition of the streets and houses. "The floors," he says, "are commonly of clay, strewed with rushes, under which lies unmolested an ancient collection of beer, grease, fragments, bones, excrements and urine of dogs, cats, and everything that is nasty."

With regard to the King's palace, the scullions lay about naked and filthy in the kitchens; and in 1526 their beastly habits provoked a special ordinance providing for "such scolyons as shall not goe naked or in garments of such vileness as they doe now, and have been acustomed to doe, nor lie in the nights and dayes in the kitchens or ground by the fireside."

Minstrels and Pages

One department of Wolsey's household may not have passed unheeded—namely, the minstrels. As a class, these musicians were doubtless peripatetic, so that the term "wandering," as applied to them, has almost the character of a standing epithet. But in the *Romance of Sir Degrevant* mention occurs of the Earl's "owne mynstralle," and, where these artists were not permanent members of the establishment, they were always "of great admittance" to the houses of the nobility, who treated them with high distinction and much liberality. Naturally, the status of minstrels differed. Of those who played before Edward I. at Whitsuntide, and who were divided into ranks, five are styled "Kings," and each of them received five marks. A valuable gold cup is recorded to have been given to a

MINSTRELS

(From MS. Royal 20 xvi f. 98b)

minstrel, but the usual presents were robes and garments.

What is signified by the phrase "great admittance" is rendered clear by a decree of Edward II. published in the year 1315, and called forth by the dishonest practice of certain persons who procured entertainment under colour of minstrelsy. It was therefore ordered that "to the houses of prelates, earls, and barons none resort to meat and drink unless he be a minstrel, and that of these minstrels there come none except it be three or four Minstrels of Honour at the most in one day, unless he be desired of the lord of the house; and to the houses of meaner men that none shall come unless he be desired; and that such as shall come so, hold themselves contented with meat and drink, and with such courtesy as the master of the house will show unto them of his own good will, without their asking of anything."

It has been said that minstrels were sometimes on the establishment. Thus in 1441, on the occasion of an annual ceremony at Maxstoke Priory six minstrels, maintained by the Clinton family at the neighbouring castle, took part and were remunerated at the rate of four shillings each, besides supping in the painted chamber with the sub-prior.

But perhaps the most useful testimony on the subject is to be found in an inventory on which we have already drawn—the Northumberland Household Book. The following are extracts relating especially to the points just noticed:

"Of the noumbre of all my lords servaunts"

"*Item*, Mynstrals in Household iij. viz., A Taberet, a Luyte, and a Rebecc.

"Rewardes to his lordships Servaunts, etc."

"*Item*, My lord usith ande accustomith to gyf yerly, when his lordschipp is at home, to his Minstraills that be daily in his houshold, as his Tabret, Luyte, and, Rebeke, upon New Yeresday in the mornynge when they do play at my lordis Chamber Dour for his Lordschip and my Lady, xx*s*: viz. xiij*s* iiij*d* for my Lord; and vj*s* viij*d* for my Lady, if sche be at my lords fyndynge, and not at hir owen; and for playing at my lordis Sone and Heire 's Chamber Doure, the lord Percy, ii*s*. And for playinge at the Chamber Doures of my lords Yonger Sonnes, my yonge masters, after viij*d* the pece for every of them—xxiij*s* iiij*d*."

"Rewardes to be geven to strangers, as Players, Mynstralls, or any other, &c."

"*Item*, my lorde usith and accustomyth to gyfe yerly to every Erles Mynstrellis, when they custome to come to hym yerly, iii*s* iiij*d*. And if they come to my lorde seldome, ones in ij or iij yeres, than vj*s*. viij*d*."

Minstrels, however, were after all only an incident. They served to entertain and amuse, as well as to keep alive the memory of great deeds and sentiments of truth and honour. But they were essentially a luxury, not a necessity, for the circumstances of a rough age sufficed to perpetuate the type which it had created. For more stable and significant elements we must look elsewhere. Just as the lower fabric of society reposed on the humble apprentice, so its upper framework depended on the page as the repository of its traditions and guarantee of the future. As early as the reign of Henry II., and doubtless earlier, the sons of nobles and gentlemen were entered at the King's Court, baronial halls, and episcopal palaces as "henchmen."

To these scions of chivalry—and a similar remark applies to the "demoiselles," their sisters—such places were a school of manners wherein they learnt the duties of obedience and reverence to their elders and betters; and, in process of time, they attained the rank of squire, and, eventually, the knight's belt. Received into the lord's family on the best terms, as became their birth and connexions, they had, nevertheless, to wait at table and perform other tasks that would now be deemed menial, such as walking by the lord's charger; and, until their education was complete, they had to submit to his orders, whatever they might be.

Perhaps the first of many books on etiquette in English is a treatise written by Grosseteste for Margaret, Countess of Lincoln, and entitled *Reules Seynt Robert.* Here it is laid down that servants and retainers should be of good character, loyal, diligent; and if they grumble or gainsay, they should be discharged, as there are many others to take their place.

We have seen that Cardinal Wolsey had young gentlemen in his household. This was also the case with Thomas à Becket, one of whose *protégés* was the heir to the throne. Another churchman, Longchamps, Bishop of Ely and Chancellor of Richard II., was notorious for the rigour of his discipline towards the young and noble members of his establishment.

The custom, one can scarcely question, was evolved from the military requirements of early Teutonic society; and, as private war died down, so the status of the page became impaired, until in the reign of Elizabeth we find him a pampered domestic, whose pert air and gaudy dress represented all that was left of a formidable troop armed with sword and

buckler. Ben Jonson deplores and ridicules the transformation in lines with which the present volume may well close. The host in the play has refused his son as page to Lord Lovel, saying that he would hang him sooner than "damn him to that desperate course of life."

Lovel. Call you that desperate, which, by a line
Of institution from our ancestors,
Hath been derived down to us, and received
In succession for the noblest way
Of brushing up our youth, in letters, arms,
Fair mien, discourses civil, exercise,
And all the blazon of a gentleman?
Where can he learn to vault, to fence,
To move his body gracefully, to speak
The language pure; or turn his mind
Or manners more to the harmony of nature
Than in these nurseries of nobility?
Host. Ay, that was when the nursery's self was noble
And only virtue made it, not the market,
That titles were not vended at the drum
And common outcry; goodness gave the greatness
And greatness worship; every house became
An academy; and those parts
We see depicted in the practice now
Quite from the institution.
Lovel. Why do you say so?
Or think so enviously? Do they not still
Learn thus the Centaur's skill, the art of Thrace,
To ride? or Pollux's mystery, to fence?
The Pyrrick gestures, both to stand and spring
In armour, to be active for the wars;
To study figures, numbers, and proportions
May yield them great in counsel and the arts:
To make their English sweet upon their tongues,
As Chaucer says?

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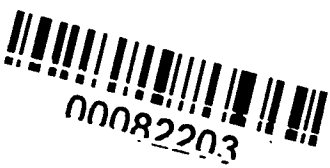

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